

No. 23-1078 (L) (2:21-cv-00316)

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

B.P.J., by her next friend and mother; HEATHER JACKSON,

*Plaintiff - Appellant,*

versus

WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON  
COUNTY BOARD OF EDUCATION; WEST VIRGINIA SECONDARY  
SCHOOL ACTIVITIES COMMISSION; W. CLAYTON BURCH, in his  
official capacity as State Superintendent; DORA STUTLER, in her official  
capacity as Harrison County Superintendent,

*Defendants - Appellees.*

and

THE STATE OF WEST VIRGINIA; LAINEY ARMISTEAD,

*Intervenors - Appellees*

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On Appeal from the United States District Court for the Southern District of  
West Virginia (Charleston Division)  
The Honorable Joseph R. Goodwin, District Judge  
District Court Case No. 2:21-cv-00316

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**JOINT APPENDIX – VOLUME 6 OF 9 (JA2567-JA3111)**

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**TABLE OF CONTENTS**

<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
<b>VOLUME ONE</b>			
District Court Docket Sheet, No. 21-cv-00316 (S.D. W.Va.)	N/A	N/A	JA0001
Declaration of Loree Stark in Support of Plaintiff's Complaint	5/26/2021	1-1	JA0049
Ex. B of Declaration of Loree Stark in Support of Complaint, Excerpts of Testimony on House Bill 3293, dated 3/18/2021 - West Virginia House of Delegates Education Committee	5/26/2021	1-1	JA0052
Ex. D of Declaration of Loree Stark in Support of Complaint, Excerpts of Testimony on House Bill 3293, dated 3/25/2021 - West Virginia House of Delegates Education Committee	5/26/2021	1-1	JA0054
Declaration of Heather Jackson in Support of Plaintiff's Motion for Preliminary Injunction	5/26/2021	2-1	JA0057
Declaration of B.P.J. in Support of Plaintiff's Motion for Preliminary Injunction	5/26/2021	2-1	JA0060
Supplemental Declaration of Katelyn Kang in Support of Plaintiff's Motion for Preliminary Injunction	6/9/2021	25	JA0073
Ex. A of Supplemental Declaration of Katelyn Kang, Testimony on House Bill 3293, dated 3/18/2021 - West Virginia House of Delegates Education Committee	6/9/2021	25	JA0077

<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
Ex. B of Supplemental Declaration of Katelyn Kang, Testimony on House Bill 3293, dated 3/18/2021 - West Virginia House of Delegates Education Committee	6/9/2021	25	JA0096
Ex. C of Supplemental Declaration of Katelyn Kang, Testimony on House Bill 3293, dated 3/25/2021 - West Virginia House of Delegates Education Committee	6/9/2021	25	JA0117
Ex. D of Supplemental Declaration of Katelyn Kang, Testimony on House Bill 3293, dated 4/1/2021 - West Virginia House of Delegates Education Committee	6/9/2021	25	JA00158
Ex. E of Supplemental Declaration of Katelyn Kang, Testimony on House Bill 3293, dated 4/1/2021 - West Virginia House of Delegates Education Committee	6/9/2021	25	JA0181
Ex. F of Supplemental Declaration of Katelyn Kang, Testimony on House Bill 3293, dated 4/8/2021 - West Virginia House of Delegates Education Committee	6/9/2021	25	JA0183
Statement of Interest of the United States	6/17/2021	42	JA0221
Ex. A in Support of Harrison County Board's Opposition to Motion for a Preliminary Injunction, 2020-2021 Track Coaches Packet	6/22/2021	47-1	JA0243



Document	Filed Date	ECF Number	Page Number
Ex. B in Support of Harrison County Board's Opposition to Motion for a Preliminary Injunction, Athletic Participation/Parental Consent/Physician's Certificate Form	6/22/2021	47-2	JA0260
Ex. D in Support of State of West Virginia's Opposition to Motion for a Preliminary Injunction, U.S. Department of Education Office of Civil Rights Revised Letter	6/23/2021	49-4	JA0265
Ex. F in Support of State of West Virginia's Opposition to Motion for a Preliminary Injunction, Case No: CO/60/2020 In the High Court of Justice Administrative Court	6/23/2021	49-6	JA0314
Ex. H in Support of State of West Virginia's Opposition to Motion for a Preliminary Injunction, Transgender Guideline	6/23/2021	49-8	JA0354
Ex. I in Support of State of West Virginia's Opposition for Preliminary Injunction, Hilton & Lundberg, <i>Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage</i> (2021)	6/23/2021	49-9	JA0397
First Amended Complaint	7/16/2021	64	JA0413
Memorandum Opinion and Order Granting Preliminary Injunction	7/21/2021	67	JA0439
The State of West Virginia's Answer to First Amended Complaint [Excerpt pp. 1, 7-8]	7/30/2021	78	JA0454

<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
Memorandum Opinion and Order Denying Motions to Dismiss	12/1/2021	129	JA0457
Memorandum Opinion and Order Granting in Part and Denying in Part Motion to Intervene	12/1/2021	130	JA0465
Intervenor Lainey Armistead's Proposed Answer to First Amended Complaint [Excerpt pp. 1, 5]	12/1/2021	131	JA0472
Defendants West Virginia State Board of Education and Superintendent W. Clayton Burch's Answer to Plaintiff's First Amended Complaint [Excerpt pp. 1, 9, 19-20]	12/15/2021	156	JA0474
Defendants Harrison County Board of Education and Dora Stutler's Answer to First Amended Complaint [Excerpt pp. 1, 8]	12/15/2022	157	JA0478
Defendant West Virginia Secondary School Activities Commission's Answer to First Amended Complaint [Excerpt pp. 1, 9]	12/15/2021	158	JA0480
Harrison County Board and County Superintendent Stipulation of Uncontested Facts	3/7/2022	252	JA0482
State Board of Education and State Superintendent Stipulation of Uncontested Facts	3/30/2022	270	JA0486
West Virginia Secondary School Activities Commission's Memorandum in Support of Motion for Summary Judgment	4/21/2022	277	JA0490

<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
Ex. 6 in Support of WVSSAC's Motion for Summary Judgment, National Federation of State High School Associations 2020 Rules Book for Track and Field and Cross County	4/21/2022	278-6	JA0522
Ex. 4 in Support of Motion for Summary Judgment by W. Clayton Burch & West Virginia State Board of Education, West Virginia House Joint Resolution 102	4/21/2022	283-4	JA0528
<b>VOLUME TWO</b>			
Ex. C in Support of Motion for Summary Judgment by State of West Virginia, [pp. 1-340] 4/4/2022 Deposition Transcript of Aron Janssen, M.D.	4/21/2022	285-3	JA0531
Ex. H in Support of Motion for Summary Judgment by State of West Virginia, Graphs	4/21/2022	285-8	JA0871
Ex. 1 in Support of Motion by B.P.J. for Summary Judgment, Declaration of Heather Jackson	4/21/2022	289-2	JA0875
Ex. A of the Declaration of Heather Jackson in Support of Motion by B.P.J. for Summary Judgment, Redacted Gender Support Plan	4/21/2022	289-2	JA0883
Ex. B of the Declaration of Heather Jackson in Support of Motion by B.P.J. for Summary Judgment, Redacted Preferred Name Request Form	4/21/2022	289-2	JA0888

<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
Ex. C of the Declaration of Heather Jackson in Support of Motion by B.P.J. for Summary Judgment, Pictures of B.P.J.	4/21/2022	289-2	JA0894
Ex. 2 in Support of Motion by B.P.J. for Summary Judgment, Declaration of B.P.J.	4/21/2022	289-3	JA0897
Ex. 4 in Support of Motion by B.P.J. for Summary Judgment, State of West Virginia's Responses to Plaintiff's First Set of Interrogatories [Excerpt pp. 1, 9]	4/21/2022	289-5	JA0902
Ex. 5 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1-3] State of West Virginia's Responses to Plaintiff's Second Set of Requests for Admission	4/21/2022	289-6	JA0904
Ex. 6 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1, 8-9, 15] Defendant Superintendent Dora Stutler's Responses and Objections to Plaintiff's Second Set of Requests for Admissions	4/21/2022	289-7	JA0907
Ex. 7 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1, 8-9, 15, 21] Defendant Harrison County Board of Education's Responses and Objections to Plaintiff's Second Set of Requests for Admission	4/21/2022	289-8	JA0911

<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
Ex. 8 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1, 16-17] Defendant West Virginia State Board of Education's Responses and Objections to Plaintiff's Second Set of Requests for Admission	4/21/2022	289-9	JA0916
Ex. 10 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1, 8-9, 13] WVSSAC's Responses to Second Set of Requests for Admission	4/21/2022	289-11	JA0919
Ex. 11 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1, 30-32] Defendant-Intervenor Lainey Armistead's Responses and Objections to Plaintiff's Second Set of Request for Admission	4/21/2022	289-12	JA0923
Ex. 12 in Support of Motion by B.P.J. for Summary Judgment, [pp. 1-158] Redacted 1/21/2022 Deposition Transcript of B.P.J.	4/21/2022	289-13	JA0927
<b>VOLUME THREE</b>			
Ex. 14 in Support of Motion by B.P.J. for Summary Judgment, [pp. 77-289] Redacted 1/20/2022 Deposition Transcript of Heather Jackson	4/21/2022	289-15	JA1085
Ex. 15 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1, 127-128] 1/19/2022 Deposition Transcript of Wesley Scott Pepper	4/21/2022	289-16	JA1298

Document	Filed Date	ECF Number	Page Number
Ex. 16 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1, 38, 40, 44-45, 56-57, 62, 65, 68-70, 83, 89-91, 95-100, 106, 125, 145, 150, 183-184, 191-192, 213-216, 218, 220-222, 236] Redacted 3/8/2022 Vol. 1 Deposition Transcript of Dora Stutler and Dave Mazza (Harrison County Board of Education)  Stutler Testimony pp. 38, 40, 44-45, 56-57, 62, 65, 68-70, 83, 89-91, 95-100, 106, 125, 145, 150, 183-184, 191-192;  Mazza Testimony pp. 213-216, 218, 220-222, 236	4/21/2022	289-17	JA1301
Ex. 17 in Support of Motion by B.P.J. for Summary Judgment, [pp. 1-163] 2/11/2022 30(b)(6) Deposition of Bernard Dolan (WVSSAC) with Ex. 5	4/21/2022	289-18	JA1340
Ex. 18 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1-2, 17, 32, 33, 66-67, 71, 80, 101-102, 113-115. 125-126, 132-136] 2/14/2022 Deposition of Michele Blatt (State Board)	4/21/2022	289-19	JA1515
Ex. 20 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1, 94-105, 118-121, 150-157] Redacted 2/24/2022 Deposition Transcript of Gerald Montano, D.O.	4/21/2022	289-21	JA1536

<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
Ex. 21 in Support of Motion by B.P.J. for Summary Judgment, [pp. 1-175] Redacted 3/11/2022 Deposition Transcript of Lainey Armistead	4/21/2022	289-22	JA1561
<b>VOLUME FOUR</b>			
Ex. 22 in Support of Motion by B.P.J. for Summary Judgment, Declaration and Expert Report of Deanna Adkins, MD	4/21/2022	289-23	JA1736
Ex. 23 in Support of Motion by B.P.J. for Summary Judgment, [pp. 1-323] 3/16/2022 Deposition Transcript of Deanna Adkins, MD	4/21/2022	289-24	JA1767
Ex. 24 in Support of Motion by B.P.J. for Summary Judgment, Expert Report and Declaration of Joshua D. Safer, MD, FACP, FACE	4/21/2022	289-25	JA2090
Ex. 25 in Support of Motion by B.P.J. for Summary Judgment, Rebuttal Expert Report and Declaration of Joshua D. Safer, MD, FACP, FACE	4/21/2022	289-26	JA2140
<b>VOLUME FIVE</b>			
Ex. 26 in Support of Motion by B.P.J. for Summary Judgment, [pp. 1-290] 3/24/2022 Deposition Transcript of Joshua Safer, M.D.	4/21/2022	289-27	JA2153
Ex. 27 in Support of Motion by B.P.J. for Summary Judgment, Expert Report and Declaration of Mary D. Fry, PhD	4/21/2022	289-28	JA2443

Document	Filed Date	ECF Number	Page Number
Ex. 29 in Support of Motion by B.P.J. for Summary Judgment, Declaration of Gregory A. Brown	4/21/2022	289-30	JA2485
<b>VOLUME SIX</b>			
Ex. 30 in Support of Motion by B.P.J. for Summary Judgment, [pp. 1-282] 3/25/2022 Deposition Transcript of Gregory A. Brown	4/21/2022	289-31	JA2567
Ex. 31 in Support of Motion by B.P.J. for Summary Judgment, Declaration of Dr. Chad T. Carlson, M.D., FACSM	4/21/2022	289-32	JA2849
Ex. 32 in Support of Motion by B.P.J. for Summary Judgment, [Excerpt pp. 1-2, 98-121, 160-161] 3/28/2022 Deposition Transcript of Chad T. Carlson, M.D., FACSM	4/21/2022	289-33	JA2927
Ex. 33 in Support of Motion by B.P.J. for Summary Judgment, Mountain Hollar MS Invitational Official Team Scores	4/21/2022	289-34	JA2955
Ex. 34 in Support of Motion by B.P.J. for Summary Judgment, Doddridge Invitational Official Team Scores	4/21/2022	289-35	JA2957
Ex. 38 in Support of Motion by B.P.J. for Summary Judgment, Email chain re Transgender participation in secondary schools bill with attachment “2021 Green Book Summary of Public Education Bills Enacted During the 2021 Regular Session” [WVSBOE 000012-26]	4/21/2022	289-39	JA2960



<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
Ex. 39 in Support of Motion by B.P.J. for Summary Judgment, WVSSAC Title 127 Legislative Rule [WVSSAC000133-220]	4/21/2022	289-40	JA2975
Ex. 40 in Support of Motion by B.P.J. for Summary Judgment, Excerpt of Email chain re Transgender participation in secondary schools [WVSBOE 000006, 08-09, 39]	4/21/2022	289-41	JA3063
Ex. 41 in Support of Motion by B.P.J. for Summary Judgment, Excerpt of West Virginia State Board of Education's Enrolled Bill Review Form for H.B. 3293 2021 Regular Session [WVSBOE 000038]	4/21/2022	289-42	JA3067
Ex. 42 in Support of Motion by B.P.J. for Summary Judgment, Screen Capture of Jordan Bridges Facebook page	4/21/2022	289-43	JA3068
Ex. 43 in Support of Motion by B.P.J. for Summary Judgment, MSNBC Twitter, 4/30/2021 Governor Justice Interview	4/21/2022	289-44	JA3080
Ex. 44 in Support of Motion by B.P.J. for Summary Judgment, NCAA.org "Board of Governors updates transgender participation policy"	4/21/2022	289-45	JA3083
Plaintiff's Statement of Undisputed Material Facts	4/21/2022	290	JA3085

Document	Filed Date	ECF Number	Page Number
<b>VOLUME SEVEN</b>			
Table of Contents of Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment [Armistead Supp. App. 0001-0003]	5/12/2022	300	JA3112
Supplemental Declaration of Lainey Armistead [Armistead Supp. App. 0004-0006] in Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment	5/12/2022	300	JA3115
Rebuttal Expert Report and Declaration of Dr. Deanna Adkins, M.D. [Armistead Supp. App. 0038-0072] in Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment	5/12/2022	300	JA3118
Rebuttal Expert Report and Declaration of Dr. Aron Janssen, M.D. [Armistead Supp. App. 0136-0166] in Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment	5/12/2022	300	JA3153
Deposition Transcript of James M. Cantor, PH.D. [Armistead Supp. App. 0209-0289] in Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment	5/12/2022	300	JA3184
Errata Sheet to Deposition of Gregory A. Brown, PH.D., FACM [Armistead Supp. App. 0479-0483] in Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment	5/12/2022	300	JA3501

<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
Excerpt Enrolled Version of HB 3293 [Armistead Supp. App. 0833-0839] in Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment	5/12/2022	300	JA3506
B.P.J.'s Redacted Birth Certificate [Armistead Supp. App. 0840] in Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment	5/12/2022	300	JA3513
Errata Sheet to Deposition of Dr. Aron Janssen, M.D. [Armistead Supp. App. 0841] in Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment	5/12/2022	300	JA3514
Errata Sheet to Deposition of Mary Fry, PH.D. [Armistead Supp. App. 0842-0846] in Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment	5/12/2022	300	JA3515
Errata Sheet to Deposition of B.P.J. [Armistead Supp. App. 0847] in Supplemental Appendix to Defendant-Intervenor's Motion for Summary Judgment	5/12/2022	300	JA3520
Ex. C in Support of Opposition by State of West Virginia to Plaintiff's Motion for Summary Judgment, Declaration of James M. Cantor, PhD.	5/12/2022	305-03	JA3521
Ex. D in Support of Opposition by State of West Virginia to Plaintiff's Motion for Summary Judgment, Declaration of Stephen B. Levine, MD	5/12/2022	305-04	JA3629

Document	Filed Date	ECF Number	Page Number
<b>VOLUME EIGHT</b>			
Ex. E in Support of Opposition by State of West Virginia to Plaintiff's Motion for Summary Judgment, [pp. 1-261] 3/29/2022 Deposition Transcript of Mary D. Fry, PhD	5/12/2022	305-05	JA3737
Ex. G in Support of Opposition by State of West Virginia to Plaintiff's Motion for Summary Judgment, Copy of West Virginia Legislature House Bill 3293	5/12/2022	305-07	JA4115
Ex. A, Roger G. Brooks' Declaration in Support of Defendant-Intervenor and the State of West Virginia's Motions to Exclude Expert Testimony of Drs. Adkins, Fry, Janssen, and Safer	5/12/2022	307-01	JA4124
Table of Contents of Appendix to Defendant-Intervenor and the State of West Virginia's Motions to Exclude Expert Testimony of Drs. Adkins, Fry, Janssen, and Safer [Armistead Daubert App. 0001-0005]	5/12/2022	307-02	JA4133
Hilton & Lundberg, <i>Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage</i> (2021) [Armistead Daubert App. 0558-0573] in Appendix to Defendant-Intervenor and the State of West Virginia's Motions to Exclude Expert Testimony of Drs. Adkins, Fry, Janssen, and Safer	5/12/2022	307-02	JA4138

Document	Filed Date	ECF Number	Page Number
Ex. F of Declaration by Sruti Swaminathan in Support of Motion by B.P.J. to Exclude Expert Testimony of James M. Cantor, Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline	5/12/2022	321-6	JA4154
Ex. 45 of First Supplemental Declaration of Loree Stark in Support of B.P.J.'s Consolidated Opposition to Defendants' Motions for Summary Judgment, WVSSAC's Responses to Plaintiff's First Set of Interrogatories	5/12/2022	332-1	JA4189
Ex. 46 of First Supplemental Declaration of Loree Stark in Support of B.P.J.'s Consolidated Opposition to Defendants' Motions for Summary Judgment, Intervenor Lainey Armistead's First Supplemental Disclosures Pursuant to Rule 26(A)(1)	5/12/2022	332-2	JA4204
Ex. 47 of First Supplemental Declaration of Loree Stark in Support of B.P.J.'s Consolidated Opposition to Defendants' Motions for Summary Judgment, WVSSAC Board of Directors Transgender Policy [WVSSAC000008]	5/12/2022	332-3	JA4214

Document	Filed Date	ECF Number	Page Number
Ex. 48 of First Supplemental Declaration of Loree Stark in Support of B.P.J.'s Consolidated Opposition to Defendants' Motions for Summary Judgment, Excerpt of Rules and Regulations of the West Virginia Secondary School Activities Commission [WVSSAC000012, WVSSAC000017]	5/12/2022	332-4	JA4215
Ex. 2 in Support of Reply by Harrison County Board of Education, Dora Stutler to Plaintiff's Consolidated Opposition, [Excerpt pp. 1, 5] Harrison County Board of Education and Dora Stutler's Responses and Objections to Plaintiff's First Set of Requests	5/26/2022	336-2	JA4217
Table of Contents of Appendix of Daubert Response to Defendant-Intervenor and the State of West Virginia's Joint Memorandums in Opposition to Plaintiff's Motions to Exclude Experts' Testimony [App. 0001-0006]	5/26/2022	343-1	JA4219
Tomkinson, G., et al., <i>European Normative Values for Physical Fitness in Children and Adolescents Aged 9-17 Years: Results From 2,779,165 Eurofit Performances Representing 30 Countries</i> , [App. 0814-0826] in Appendix of Daubert Response to Defendant-Intervenor and the State of West Virginia's Joint Memorandums in Opposition to Plaintiff's Motions to Exclude Experts' Testimony	5/26/2022	343-1	JA4225

Document	Filed Date	ECF Number	Page Number
Ex. A in Support of Motion <i>In Limine</i> by B.P.J. to Exclude Evidence and/or Argument Intended to Question Plaintiff's Gender Identity, Redacted Order Granting Petition for Change of Name	6/22/2022	417-1	JA4238
Plaintiff's Reply in Support of Her Motion <i>In Limine</i> to Exclude Evidence and/or Testimony of Bernard Dolan Regarding Certain Hearsay Statements [Excerpt pp. 1-2]	7/11/2022	470	JA4244
Ex. A in Support of Joint Motion by Lainey Armistead & State of West Virginia to Supplement the Expert Report of Gregory A. Brown, Supplemental Declaration of Gregory A. Brown, Ph.D., FACSM	10/21/2022	500-1	JA4246
Memorandum Opinion and Order re Motions for Summary Judgment	1/5/2023	512	JA4256
Judgment Order	1/5/2023	514	JA4279
Declaration of B.P.J. in Support of Motion for Stay	1/20/2023	515-1	JA4280
Declaration of Heather Jackson in Support of Motion for Stay	1/20/2023	515-2	JA4284
Notice of Appeal by B.P.J.	1/23/2023	517	JA4289
Notice of Appeal by West Virginia Secondary School Activities Commission	2/1/2023	522	JA4291
Memorandum Opinion and Order re Stay Pending Appeal	2/7/2023	527	JA4296

Document	Filed Date	ECF Number	Page Number
<b>VOLUME NINE</b>			
Table of Contents of Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4303
Declaration of Lainey Armistead [Armistead App. 0001-0008] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4307
Declaration of Chelsea Mitchell [Armistead App. 0009-0019] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4315
Declaration of Christina Mitchell [Armistead App. 0020-0032] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4326
Declaration of Alanna Smith [Armistead App. 0033-0038] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4339
Declaration of Selina Soule [Armistead App. 0039-0048] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4345
Declaration of Darcy Aschoff [Armistead App. 0049-0053] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4355
Declaration of Cynthia Monteleone [Armistead App. 0054-0058] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4360



<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
Declaration of Madison Kenyon [Armistead App. 0065-0069] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4365
Declaration of Mary Marshall [Armistead App. 0065-0069] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4371
Declaration of Haley Tanne [Armistead App. 0070-0074] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4376
Declaration of Linnea Saltz [Armistead App. 0075-0079] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4381
Excerpt of 2019 NCAA Division II Outdoor Track & Field Championship Results [Armistead App. 0080-0081] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4386
Excerpt of 2020 Big Sky Indoor Track & Field Championship Results [Armistead App. 0082-0086] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4388
2020 Women's Ivy League Swimming & Diving Championship Results [Armistead App. 0087-0108] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4393

Document	Filed Date	ECF Number	Page Number
2020 NCAA Division I Women's Swimming & Diving Championship Results (500 Yard Freestyle) [Armistead App. 0109-0112] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4415
2020 NCAA Division I Women's Swimming & Diving Championship Results (100 Yard Freestyle) [Armistead App. 0113-0115] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4419
Redacted Deposition of Dr. Kacie Kidd, M.D [Armistead App. 1142-1278] Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA44423
Plaintiff's Redacted Responses and Objections to Defendant-Intervenor Lainey Armistead's First Set of Requests for Admission [Armistead App. 1437-1486] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4560
Plaintiff's Redacted Responses and Objections to Defendant-Intervenor Lainey Armistead's Third Set of Interrogatories and Second and Third Sets of Requests for Admission [Armistead App. 1487-1510] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4610

<b>Document</b>	<b>Filed Date</b>	<b>ECF Number</b>	<b>Page Number</b>
Errata Sheet to Deposition of Dr. Joshua Safer, M.D. [Armistead App.1535-1537] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4634
Redacted Harrison County Board of Education Document Production [Armistead App.1538-1553] [HCBOE 01167-01172] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4637
Redacted Harrison County Board of Education Document Production [Armistead App.1544-1547] [HCBOE 01265-01268] in Appendix to Defendant-Intervenor's Motion for Summary Judgment	3/22/2023	529	JA4643
Redacted Amended Birth Certificate of B.P.J.	N/A	N/A	JA4647

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

-----  
)  
B.P.J. by her next friend and)  
mother, HEATHER JACKSON, )

)  
Plaintiff, )

)  
vs. )

) No. 2:21-cv-00316

)  
WEST VIRGINIA STATE BOARD OF )  
EDUCATION, HARRISON COUNTY )  
BOARD OF EDUCATION, WEST )  
VIRGINIA SECONDARY SCHOOL )  
ACTIVITIES COMMISSION, W. )  
CLAYTON BURCH in his official )  
capacity as State )  
Superintendent, DORA STUTLER, )  
in her official capacity as )  
Harrison County )  
Superintendent, and THE STATE )  
OF WEST VIRGINIA, )

)  
Defendants. )

)  
And )

)  
LAINEY ARMISTEAD, )

)  
Defendant-Intervenor.)  
-----

REMOTE VIDEOTAPED DEPOSITION OF  
GREGORY BROWN, Ph.D.  
Friday, March 25, 2022  
Volume I

Reported by:  
ALEXIS KAGAY  
CSR No. 13795  
Job No. 5122856  
PAGES 1 - 282

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON  
DIVISION

B.P.J. by her next friend and)  
mother, HEATHER JACKSON, )

Plaintiff, )

vs. )

No. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF )  
EDUCATION, HARRISON COUNTY )  
BOARD OF EDUCATION, WEST )  
VIRGINIA SECONDARY SCHOOL )  
ACTIVITIES COMMISSION, W. )  
CLAYTON BURCH in his official )  
capacity as State )  
Superintendent, DORA STUTLER, )  
in her official capacity as )  
Harrison County )  
Superintendent, and THE STATE )  
OF WEST VIRGINIA, )

Defendants. )

And )

LAINY ARMISTEAD, )

Defendant-Intervenor.)

Videotaped deposition of GREGORY BROWN, Ph.D.,  
Volume I, taken on behalf of Plaintiff, with all  
participants appearing remotely, beginning at 7:02 a.m.  
and ending at 4:03 p.m. on Friday, March 25, 2022,  
before ALEXIS KAGAY, Certified Shorthand Reporter  
No. 13795.

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3  
4 Videographer:

5 KIMBERLEE DECKER

## INDEX

WITNESS

EXAMINATION

GREGORY BROWN, Ph.D.

Volume I

BY MR. BLOCK

16

## EXHIBITS

NUMBER

DESCRIPTION

PAGE

Exhibit 64	Declaration of Gregory A. Brown, PH.D., FACSM	24
------------	--	----

Exhibit 65	Declaration of Professor Gregory Brown, Soule Matter	26
------------	---	----

Exhibit 66	Expert Declaration of Gregory A. Brown, Ph.D., FACSM, Hecox Matter	26
------------	---	----

Exhibit 67	White Paper - Concerning Male Physiological and Performance Advantages in Athletic Competition and the Effect of Testosterone Suppression on Male Athletic Advantage, Gregory A.	28
------------	---	----

Page 9

1		Brown, Ph.D., December 14, 2021	
2			
3	Exhibit 68	Video Clip	59
4			
5	Exhibit 69	Women's Sports Policy Working	111
6		Group Briefing Book a Request to	
7		Congress and the Administration	
8		to Safeguard Girls' and Women's	
9		Sport & Include Transgender	
10		Athletes	
11			
12	Exhibit 70	Commonwealth of Pennsylvania	123
13		House of Representatives	
14		Education Committee Public	
15		Hearing, Presentation on HB 972	
16		(GLEIM) Fairness in Women's	
17		Sports Act	
18			
19	Exhibit 71	"Proandrogenic and Antiandrogenic	139
20		Progestins in Transgender Youth:	
21		Differential Effects on Body	
22		Composition and Bone Metabolism"	
23			
24	Exhibit 72	The Journal of Sexual Medicine	149
25		"Transgender Health: Early	

1		Hormonal Treatment Affects Body	
2		Composition and Body Shape in	
3		Young Transgender Adolescents"	
4			
5	Exhibit 73	Brown Blog Post	161
6			
7	Exhibit 74	"Transwomen Competing in Women's	177
8		Sports: What we know, and what we	
9		don't"	
10			
11	Exhibit 75	"Re-Affirming the Value of the	201
12		Sports Exception to Title IX's	
13		General Non-Discrimination Rule"	
14			
15	Exhibit 76	"Transgender Women in the Female	209
16		Category of Sport: Perspectives	
17		on Testosterone Suppression and	
18		Performance Advantage"	
19			
20	Exhibit 77	World Rugby Transgender Women	217
21		Guidelines	
22			
23	Exhibit 78	"How does hormone transition in	219
24		transgender women change body	
25		composition, muscle strength and	

1 haemoglobin? Systematic review  
2 with a focus on the implications  
3 for sport participation"  
4

5 Exhibit 79 "Integrating transwomen and 228  
6 female athletes with Differences  
7 of Sex Development (DSD) into  
8 Elite Competition: The FIMS 2021  
9 Consensus Statement"

1 Friday, March 25, 2022

2 7:02 a.m.

3  
4 THE VIDEOGRAPHER: Good morning. We are on  
5 the record at 9:02 a.m. on March 25th of 2022. All 07:02:02  
6 participants are attending remotely.

7 Audio and video recording will continue to  
8 take place unless all parties agree to go off the  
9 record.

10 This is media unit 1 of the recorded 07:02:20  
11 deposition of Gregory A. Brown, Ph.D., taken by counsel  
12 for the plaintiff, in the matter of B.P.J., by her next  
13 friend and mother, Heather Jackson, versus  
14 West Virginia State Board of Education, et al., filed  
15 in the United States District Court, for the Southern 07:02:36  
16 District of West Virginia, Charleston Division, Case  
17 Number 2:21-cv-00316.

18 My name is Kimberlee Decker from Veritext  
19 Legal Solution (sic), and I am the videographer. The  
20 court reporter is Alexis Kagay. I am not related to 07:02:57  
21 any party in this action, nor am I financially  
22 interested in the outcome.

23 Counsel and all present will now state their  
24 appearances and affiliations for the record. If there  
25 are any objections to proceeding, please state them at 07:03:10

Page 13



1 the time of your appearance, beginning with the  
2 noticing attorney.

3 MR. BLOCK: Good morning. My name is  
4 Josh Block from the ACLU. My pronouns are he/him. And  
5 I am here on behalf of the plaintiff, B.P.J. 07:03:26

6 And I'll let my co-counsel introduce  
7 themselves.

8 MS. HARTNETT: Good morning. This is  
9 Kathleen Hartnett from Cooley for plaintiff.

10 MR. BARR: Good morning. Andrew Barr from 07:03:38  
11 Cooley, also for plaintiff.

12 MS. KANG: Good morning. Katelyn Kang from  
13 Cooley, also for plaintiff.

14 MS. REINHARDT: Good morning. Elizabeth  
15 Reinhardt with Cooley for plaintiff. 07:03:52

16 MS. HELSTROM: Hello. This is Zoe Helstrom  
17 with Cooley, also for plaintiff.

18 COUNSEL SWAMINATHAN: Good morning. This is  
19 Sruti Swaminathan from Lambda Legal on behalf of  
20 plaintiff. 07:04:04

21 MR. CHARLES: Good morning. Carl Charles,  
22 he/him, with Lambda Legal for plaintiff.

23 MS. SMITH-CARRINGTON: Good morning. Avatara  
24 Smith-Carrington from Lambda Legal on behalf of  
25 plaintiff. 07:04:18

1 MR. FRAMPTON: I -- I think that's everyone  
2 for plaintiff, but if not, correct me.

3 This is Hal Frampton with Alliance Defending  
4 Freedom for the intervenor.

5 MS. CSUTOROS: This is Rachel Csutoros from 07:04:29  
6 Alliance Defending Freedom for the intervenor.

7 MR. TRYON: This is David Tryon with  
8 West Virginia state attorney general's office on behalf  
9 of the State of West Virginia.

10 MR. CROPP: This is Jeffrey Cropp on behalf of 07:04:45  
11 defendants Harrison County Board of Education and  
12 Superintendent Dora Stutler.

13 MS. GREEN: This is Roberta Green, Shuman  
14 McCuskey Slicer, here on behalf of WVSSAC.

15 MR. TAYLOR: This is Michael Taylor, law firm 07:05:04  
16 of Bailey & Wyant, on behalf of the West Virginia State  
17 Board of Education and W. Clayton Burch,  
18 superintendent.

19 THE VIDEOGRAPHER: Thank you.

20 Will the court reporter please swear in the  
21 witness.

22

23 GREGORY BROWN, Ph.D.,  
24 having been administered an oath, was examined and  
25 testified as follows:

1

2

## EXAMINATION

3

BY MR. BLOCK:

4

Q Good morning, Dr. Brown. How are you today?

5

A I'm doing fine. Thank you.

07:05:38

6

How are you today, Mr. Block?

7

Q I'm good. I'm good.

8

This is our second time seeing each other

9

virtually for a deposition, isn't it?

10

A It is. It is.

07:05:48

11

Q Well, could you state your name for the

12

record, please.

13

A My name is Gregory Allen Brown.

14

Q And have you had your deposition taken before?

15

A Yes, I have.

07:06:04

16

MR. FRAMPTON: Josh, real -- real quick, just

17

before we get too far, I just want to memorialize for

18

the record, are we proceeding under the same agreement

19

that all objections except to form and scope are

20

reserved?

07:06:16

21

MR. BLOCK: Yes. And -- and I'd like to

22

actually also propose that, of course, any party is

23

free to object on their own, but it is also not

24

necessary for multiple parties to object to the same

25

question that -- an objection from one defendant or

07:06:33

1       intervenor will preserve the objections for everyone  
2       else as well.

3               Is that also acceptable?

4               MR. FRAMPTON: That -- that's acceptable to  
5       the intervenor.

07:06:51

6               MR. TRYON: This is David Tryon. That is  
7       acceptable to the State.

8               MS. GREEN: This is Roberta Green. That's  
9       acceptable to WVSSAC.

10              MR. CROPP: This is Jeffrey Cropp. That's  
11       acceptable to the Harrison County Board of Education  
12       and Dora Stutler.

07:07:03

13              MR. TAYLOR: This is Michael Taylor. That's  
14       acceptable for the State Board of Education and  
15       Superintendent Burch.

07:07:14

16              MR. BLOCK: Excellent.

17       BY MR. BLOCK:

18              Q     So other than your deposition with me, have  
19       you had any other depositions taken?

20              A     No, I have not.

07:07:27

21              Q     All right. Great.

22              So I'll just review with you some ground rules  
23       again, which you're -- you're probably familiar with,  
24       and I have three of them.

25              You know, the first is that -- actually, it's

07:07:35

Page 17

1 less applicable for a video deposition, but it's  
2 important that all of your responses be verbal instead  
3 of head nods so that we can have a -- a transcript of  
4 your responses.

5 Does that sound good to you? 07:07:53

6 A Yes. Thank you.

7 Q Sure. The second is that we need to make sure  
8 not to speak over each other. So if you could wait for  
9 me to complete my question before answering and I'll  
10 wait for you to complete your answer before I ask 07:08:06  
11 another question.

12 Does that sound fair?

13 A I'll do my best.

14 Q So will I.

15 And the third is that, you know, as always, 07:08:16  
16 it's my job to ask questions that you understand. So  
17 if there's anything about my question you don't  
18 understand, I'm going to rely on you to explain to me  
19 that you don't understand it, and I will do my best to  
20 rephrase it. But if you answer the question, I'm going 07:08:32  
21 to assume that meant that you understood what I was  
22 saying, okay?

23 A Sounds fair.

24 Q Terrific.

25 All right. How did you prepare for the 07:08:44

1 deposition today?

2 A Reviewed what I had written for my  
3 declaration, the expert report. I had a good  
4 breakfast, got a good night's sleep. I have met with  
5 attorneys for Alliance Defending Freedom and 07:09:03  
6 David Tryon to brief me on, you know, what happens in a  
7 deposition, what I should expect.

8 MR. FRAMPTON: I'm going to instruct the  
9 witness, you don't -- anything that we discussed is  
10 privileged. So you can certainly tell him that you met 07:09:16  
11 with us, but the substance of that discussion should  
12 not be told.

13 THE WITNESS: Okay.

14 BY MR. BLOCK:

15 Q Did -- in preparation for the deposition, did 07:09:25  
16 you review anything that was not cited in your report?

17 A Yes. Like previous exercise physiology  
18 textbooks, lots of other things that probably weren't  
19 cited in there, just in the course of general  
20 knowledge. 07:09:47

21 Q And -- and you -- you've reviewed those to  
22 refresh your understanding of them in preparation for  
23 today's deposition?

24 A Yes. And also in preparation for teaching my  
25 classes and those types of things. 07:10:00

Page 19

1 Q Did you conduct any additional research to  
2 prepare for today's deposition?

3 A Can you explain what you mean by "research"?

4 Q Well, I guess, did you look for new articles  
5 in the field or anything like that in preparation for 07:10:17  
6 the deposition?

7 A Yes. In preparation for the deposition, I  
8 have looked to see if there have been any relevant new  
9 publications, and I haven't come up with any that I  
10 haven't cited in the deposition. 07:10:33

11 Q Great. Have you been retained as an expert  
12 witness before?

13 A Yes.

14 Q I want to get a complete list of all of the  
15 times you've been retained as an expert witness. 07:10:46

16 So could you tell me, to the best of your  
17 recollection, the first time you were retained as an  
18 expert witness?

19 A That would be for the case of Soule versus the  
20 Connecticut Interscholastic Athletic Association (sic). 07:11:05

21 Q And who retained you for that case?

22 A Alliance Defending Freedom.

23 Q Great. What is the next case in which you  
24 were retained as an expert witness?

25 A The next case is Hecox versus Little in the 07:11:17

1 state of Idaho.

2 Q And who retained you as an expert witness in  
3 that case?

4 A That was the Idaho attorney general's office.

5 Q And what's the next case where you were 07:11:31  
6 retained as an expert witness?

7 A The next case is in Florida, and I apologize,  
8 I cannot remember the names and initials on that versus  
9 State of Florida.

10 Q And what's the general subject of that 07:11:42  
11 litigation?

12 A Similar to this one, State of Idaho, as  
13 regarding a state law on women's participation in  
14 women's sports.

15 Q A Florida state law? 07:11:57

16 A Yes.

17 Q And who retained you in that case?

18 A Andy Bardos, if I remember correctly on his  
19 last name. I apologize if I don't get the  
20 pronunciation correctly. And that is -- they're 07:12:16  
21 working for the State of Florida.

22 Q Is there any other case in which you've been  
23 retained as an expert witness?

24 A I have agreed to serve as an expert witness in  
25 the state of Arkansas if there is a case that were to 07:12:35



1       come forth there.

2           Q     Related to sports?

3           A     Yes.   Yeah, same topic.

4           Q     But not as an expert in any other litigation  
5       in Arkansas about other types of legislation; right?       07:12:47

6           A     That's correct.

7           Q     Is there any other case in which you've been  
8       retrained as an expert witness?

9           A     Just want to verify that I said them.   So  
10       Soule versus CIAC, Idaho, Florida, Arkansas and then       07:13:05  
11       the current case.

12          Q     Okay.   How about in Tennessee, are you an  
13       expert witness in Tennessee?

14          A     No.

15          Q     Have you been retained as a nontestifying       07:13:27  
16       expert witness in connection with any litigation?

17          A     No.

18          Q     Okay.   All right.   So I'm going to just review  
19       with you some previous expert reports you filed.

20                Actually, before I do that, have you filed an       07:13:43  
21       expert report yet in the Florida litigation?

22          A     No.

23          Q     Okay.   All right.   So -- so this is going to  
24       be the moment of truth.   I'm going to attempt to move a  
25       document into Exhibit Share, and we'll see -- we'll see       07:13:57

1       how that -- that works. All right.

2               All right. Let's see.

3               Actually, first, I'm going to try to get  
4       your -- your current expert report into here. Just  
5       give me half a second.

07:14:26

6               A     Take your time.

7               Q     Yeah, no, I might need to take my time.

8               All right. No, here's the one in your case.

9               All right. Moving it into our "Marked  
10       Exhibits" folder. And in a moment, like when you  
11       refresh, you should hopefully see a document.

07:14:40

12              A     So is the document 2022.02.23 Brown Expert  
13       Report PDF?

14              Q     Yes. And -- and just --

15              MR. BLOCK: Lindsay, does that automatically  
16       get marked as a -- a sequential exhibit number?

07:15:09

17              MS. DUPHILY: It -- I -- I'll fix it. And  
18       I'll show you -- you need to mark it as a -- introduce  
19       it as an exhibit. You just moved it.

20              MR. BLOCK: I just moved it. Okay. So sorry.  
21       How -- how do we --

07:15:22

22              MS. DUPHILY: I can -- I can correct it. Go  
23       ahead and continue, and I will correct it.

24              MR. BLOCK: Okay. And -- thanks.

25              Will you be able to do that for the subsequent

07:15:28

Page 23

1 ones, too?

2 And sorry for my incompetence.

3 MS. DUPHILY: Why don't I just -- I will input  
4 the next ones and then show you on the break how to do  
5 it.

07:15:39

6 (Exhibit 64 was marked for identification  
7 by the court reporter and is attached hereto.)

8 MR. BLOCK: Terrific. Thank you so much.

9 BY MR. BLOCK:

10 Q All right. Do you recognize this document? 07:15:41

11 A Yes, I do.

12 Q What is it?

13 A It is my expert declaration for the case of  
14 B.P.J. versus West Virginia.

15 Q And when is it -- when is it dated? 07:16:01

16 A It states: "Executed on February 23, 2022."

17 Q And that's your signature next to it?

18 A Yes, that is.

19 Q Okay. So now I'm just going to take you  
20 through some previous reports that you filed. 09:16:18

21 So if you hit refresh, you should see another  
22 document titled "Brown PI decl."

23 A Yes.

24 Q Great. Do you recognize that document?

25 A Yes, I do. 09:17:01

Page 24

1 Q What is it?

2 A That is my expert declaration in the case of  
3 Soule versus Connecticut Association of Schools.

4 Q Great. And when is that dated?

5 A Dated February 12th, 2020. 09:17:22

6 Q Terrific. Let me take a look at that.

7 All right. Let me show you another one, I'm  
8 sorry.

9 MS. DUPHILY: Maybe -- maybe we should  
10 quickly, it's up to you -- 09:17:40

11 MR. BLOCK: Yeah, let's do a little bit --  
12 let's go off the record, and you can give me a  
13 tutorial, and then we can be -- save time.

14 THE VIDEOGRAPHER: We are off the record at  
15 9:18 a.m. 09:17:49

16 (Recess.)

17 THE VIDEOGRAPHER: We are on the record at  
18 9:21 a.m.

19 BY MR. BLOCK:

20 Q All right. Dr. Brown, during our break, we 09:21:05  
21 sort of recorrected and marked the exhibits we  
22 previously looked at.

23 Could you, just for the record, look at the  
24 document marked Exhibit 64, please.

25 A All right. Exhibit 064. 09:21:26

1 Q And what is that exhibit?

2 A That is my expert declaration for B.P.J.

3 versus West Virginia.

4 (Exhibit 65 was marked for identification

5 by the court reporter and is attached hereto.) 09:21:35

6 BY MR. BLOCK:

7 Q Terrific. And -- now, can you look at the

8 document marked Exhibit 65, please.

9 A All right. 065.

10 Q And what is that -- 09:21:52

11 A Yes --

12 Q What -- what -- what is that document?

13 A That is my declaration in the case of

14 Soule versus Connecticut Association of Schools.

15 MR. BLOCK: Great. All right. And now I'm 09:22:10

16 going to give you another document to look at in a

17 minute. In your folder should be appearing a document

18 marked Exhibit 66.

19 (Exhibit 66 was marked for identification

20 by the court reporter and is attached hereto.) 09:22:16

21 BY MR. BLOCK:

22 Q Could you let me know when you see that

23 document?

24 A Exhibit 066 - WV AG?

25 Q Yes. 09:22:29

1           A    And on the first page of that, it's got, in  
2   large bold capital letters, "Exhibit B"?

3           Q    Uh-huh.

4           A    Okay.

5           Q    Could you go to the second page? 09:22:46

6           A    Yes.

7           Q    All right. And could -- do you recognize this  
8   document?

9           A    Yes, I do.

10          Q    And what is it? 09:22:50

11          A    That is my expert declaration for the case of  
12   Hecox versus Little.

13          Q    Terrific. And if you scroll down to -- to  
14   near the end, which I -- if we can find the date on  
15   which that one was executed. It should be on page 69 09:23:05  
16   of the PDF.

17               Are you -- do you see it?

18          A    I'm still scrolling.

19          Q    All right. You can also type in "69" in  
20   the -- the -- the top box, if that make it easier too. 09:23:33

21          A    Sorry. Sorry, I tried to type in "69," and I  
22   accidentally Google searched for that.

23          Q    Oh, well. Have you gotten to it yet?

24          A    Still scrolling.

25          Q    All right. 09:24:19

Page 27

1 MS. DUPHILY: If you download these exhibits,  
2 you can also access them easier with your software.

3 MR. FRAMPTON: I think he's almost there.

4 THE WITNESS: All right. I see my signature  
5 page. Well, yeah, executed 3rd June 2020. 09:24:34

6 BY MR. BLOCK:

7 Q Terrific. And then for this litigation of  
8 B.P.J., at the PI stage, you also submitted a copy of  
9 this Hecox declaration; is that right?

10 A Yes. 09:24:53

11 MR. BLOCK: Okay. And then I want to show you  
12 another document in a second.

13 So this document is going to be marked, as  
14 soon as I'm able to mark it, as Exhibit 67. Let me  
15 know when it's visible for you. 09:25:36

16 (Exhibit 67 was marked for identification  
17 by the court reporter and is attached hereto.)

18 THE WITNESS: All right. Exhibit 067 -  
19 Gregory Brown Male Athletic --

20 BY MR. BLOCK: 09:25:49

21 Q Yes.

22 A Yes.

23 Q What is this document?

24 A That is a "White Paper Concerning Male  
25 Physiological and Performance Advantages in Athletic 09:25:58

1 Competition and The Effect of Testosterone Suppression  
2 on Male Athletic Advantage."

3 Q And it's dated December 14th, 2021; correct?

4 A That is correct.

5 Q Now, this document was not prepared as an 09:26:11  
6 expert report in -- in any litigation, was it?

7 MR. FRAMPTON: Object to the form.

8 BY MR. BLOCK:

9 Q Why did you prepare this document?

10 A I was asked by Alliance Defending Freedom to 09:26:25  
11 prepare a white paper.

12 Q Okay. And what is a -- a white paper as  
13 opposed to an expert report?

14 MR. FRAMPTON: Same objection.

15 Go ahead. 09:26:36

16 THE WITNESS: White paper is often used by an  
17 organization, a company, something like that, for  
18 gaining insight or information on a topic.

19 BY MR. BLOCK:

20 Q Okay. So did you -- what did you understand 09:26:48  
21 to be the -- the purpose of this white paper?

22 A My understanding was that this was for  
23 Alliance Defending Freedom and affiliated and interest  
24 organizations to be able to review the research that I  
25 summarize in that paper. 09:27:10



1 Q Okay. And did you -- did you have an  
2 understanding that this white paper would be used for  
3 any lobbying purposes?

4 MR. FRAMPTON: Object to the form.

5 BY MR. BLOCK: 09:27:25

6 Q You can answer, if you understand.

7 A My understanding was that Alliance Defending  
8 Freedom could do it with what they wanted and people  
9 could ask them for it for purposes that people want to  
10 use it for. 09:27:38

11 Q But did you -- so did you know one way or  
12 another whether the -- the document would be used for  
13 purposes of lobbying?

14 A I assumed that it would be introduced to  
15 people who are interested in what the science says on 09:27:57  
16 the matter of transgender athletes competing in women's  
17 sports.

18 Q And those would include legislators?

19 A Yes.

20 Q Okay. And, in fact, you have testified in 09:28:11  
21 support of legislation to restrict the ability of  
22 transgender girls and women to participate in women's  
23 sports; is that right?

24 MR. TRYON: Objection --

25 MR. FRAMPTON: Object to the form. 09:28:26

1 MR. TRYON: -- terminology.

2 MR. FRAMPTON: Josh, real quick, could we do  
3 our usual standing objection on terminology so that we  
4 don't have to jump in on that every time?

5 MR. BLOCK: You know -- yes. Yes, you can. 09:28:37

6 I -- I will have some questions on that, and you can --  
7 you -- you can -- if we could -- I'll give you that  
8 standing objection, but the witness has also used some  
9 of these terms himself in written reports, so I'm -- I  
10 want to have a little colloquy with him about that. 09:28:57

11 BY MR. BLOCK:

12 Q But -- but in the meantime, you -- you have in  
13 fact testified in support of legislation similar to  
14 the -- the legislation at issue in this case; is that  
15 right? 09:29:13

16 MR. FRAMPTON: Object to the form.

17 Go ahead.

18 THE WITNESS: Yes, I have testified in front  
19 of legislative bodies regarding legislation clarifying  
20 the participation of biological females in women's 09:29:25  
21 sports.

22 BY MR. BLOCK:

23 Q The participation of biological females, or  
24 did you mean -- did you mean to say transgender females  
25 or, to use your language, biological males? I just 09:29:36

1 want to know the -- want to make sure you spoke  
2 correctly.

3 A The legislation was to limit the participation  
4 in girls and women's sports to biological females.

5 Q Great. And so where -- which states did you 09:29:50  
6 testify in -- in support of legislation?

7 A I may not be able to remember all of them. I  
8 will give you my best recollection.

9 Ohio, Pennsylvania, Texas, South Dakota,  
10 Maine, North Carolina are ones that I think I testified 09:30:14  
11 either in person or through Zoom.

12 Q And who asked you to testify in each of those  
13 states?

14 A That would vary from one state to the next.

15 Q Okay. So let -- let's take them one at a 09:30:36  
16 time.

17 In Ohio, who asked you to testify?

18 A Center for Christian Virtue.

19 Q And in Texas, who asked you to testify?

20 A Texas Values, if I remember correctly, is 09:30:50  
21 their name.

22 Q And in North Carolina, who asked you to  
23 testify?

24 A I can't remember their name exactly, but it  
25 was something along North Carolina Family Values, 09:31:04

1 something like that.

2 Q In Pennsylvania, who asked you to testify?

3 A Pennsylvania Family Alliance, if I remember  
4 correctly.

5 Q And in Maine, who asked you to testify? 09:31:17

6 A That, I think, was Save Women's Sports.

7 Q And do you know whether the legislatures in  
8 any of those states received copies of your white  
9 paper?

10 A I do not know if they received copies of my 09:31:32  
11 white paper.

12 Q When you testified in those states, did you  
13 refer to any of the analysis or research you conducted  
14 in the white paper?

15 A I -- many of those were testified last year 09:31:47  
16 before I had completed the white paper.

17 Q So what about the ones that were after you had  
18 completed the white paper?

19 A After completing the white paper, I know I had  
20 referred to my previous expert declaration in 09:32:04  
21 Connecticut and Idaho. I don't remember if I referred  
22 specifically to the white paper.

23 Q So in Pennsylvania, you don't know if the  
24 Pennsylvania legislature had a copy of your white paper  
25 or not? 09:32:21

1 A No. That was before I had written the white  
2 paper.

3 Q So when did you -- during what period of time  
4 did you write the white paper?

5 A Well, I started working on it essentially as 09:32:30  
6 soon as I had finished the declaration for Idaho, just  
7 as -- you know, trying to update as new research or new  
8 information became available. And so it was over the  
9 course of a year and a half, year and three-quarters  
10 that I was working on the -- the white paper. 09:32:50

11 Q And had ADF asked you to -- to create the  
12 right -- excuse me -- the white paper a year and a half  
13 before the publication date?

14 MR. FRAMPTON: Object to the form.

15 THE WITNESS: No. I was just updating the 09:33:05  
16 information so that I would be current on the topic.  
17 BY MR. BLOCK:

18 Q And so when were you asked to -- to write down  
19 that information in the form of a white paper?

20 A Sometime this last fall. I can't remember. 09:33:19  
21 September, October, somewhere in those lines, but I  
22 cannot remember exactly.

23 Q Okay. Were you paid for -- to write the white  
24 paper?

25 A No, I was not. 09:33:40

1 Q So you have disclosed in your report that your  
2 hourly rate for preparing your expert report; is that  
3 right?

4 A That is correct.

5 Q But is it fair to say that a substantial 09:33:56  
6 portion of the expert report was based on the white  
7 paper?

8 MR. FRAMPTON: Object to the form.

9 THE WITNESS: That would be fair to say that.

10 BY MR. BLOCK: 09:34:05

11 Q Okay. So to the extent that any of the work  
12 in the expert report was already conducted for the  
13 white paper, then that was essentially done for free;  
14 is that fair?

15 MR. FRAMPTON: Same objection. 09:34:19

16 Go ahead.

17 THE WITNESS: Yes, it would be fair to say  
18 that the white paper was not paid for, for my work on  
19 that, and so overlap between the white paper and the  
20 expert report was primarily volunteer work. 09:34:30

21 BY MR. BLOCK:

22 Q And when you first became interested in the  
23 topic of the participation of transgender people in  
24 sports, you were the person who reached out to ADF; is  
25 that right? 09:34:46

1 A That is correct.

2 Q And why did you do that?

3 A I had seen a news report about the Soule  
4 versus Connecticut case and -- well, a -- a report. I  
5 guess I shouldn't say "news" because I can't remember 09:35:00  
6 where I saw it. And so I reached out to Alliance  
7 Defending Freedom to see if I could be of help.

8 Q So you -- you personally feel strongly about  
9 this issue; is that fair?

10 MR. FRAMPTON: Object to the form. 09:35:16

11 THE WITNESS: I don't know that I would  
12 characterize my interest as a feeling so much as an  
13 intellectual and professional interest.

14 BY MR. BLOCK:

15 Q Is there any other circumstance in which 09:35:25  
16 you've reached out to an organization to volunteer  
17 yourself as an expert source?

18 A Yes.

19 Q What -- can you tell me what those situations  
20 are? 09:35:47

21 A I have reached out to legislators in the state  
22 of Nebraska to state that I am an exercise physiologist  
23 and would be willing to help if they have questions on  
24 litigation in this -- or legislation in this area, not  
25 just trans women's -- transgender individuals in 09:36:07

1 sports, but relative to my professional expertise in  
2 exercise physiology.

3 Q Okay. Any other instance?

4 A I am trying to remember.

5 I -- I can't remember others. They may have 09:36:30  
6 happened, where I reached out and did not get a  
7 response.

8 Q But sitting here today, you can't remember  
9 what those other instances were?

10 A That is correct. 09:36:41

11 Q Okay. And you -- you're not sure that there  
12 were other instances; is that right?

13 A That is correct.

14 Q All right. So that -- that's all my questions  
15 on that topic. 09:36:56

16 I do have some questions just about  
17 terminology here.

18 You know what the term "cisgender" means;  
19 right?

20 MR. FRAMPTON: Object to the form. 09:37:05

21 THE WITNESS: Cisgender means a person whose  
22 gender identity aligns with their biology.

23 BY MR. BLOCK:

24 Q And you don't have any objection to using the  
25 word "cisgender," do you? 09:37:17



1 A Yes, I do.

2 Q You've used the word "cisgender" in other  
3 publications, haven't you?

4 A I have.

5 Q Okay. Why did you use the word "cisgender" in 09:37:28  
6 those publications?

7 A Because it is a frequently used term in the --  
8 in this field, and so it is probably the appropriate  
9 term to use.

10 Q So why do you have an objection to using that 09:37:42  
11 term in the deposition if -- if that's the appropriate  
12 term to use?

13 MR. FRAMPTON: Object to the form.

14 THE WITNESS: I know of individuals who do not  
15 like the term "cisgender" because when it is applied in 09:38:00  
16 the term such as "cis male" or "cis female," they  
17 consider it to be infringing upon their identity as  
18 male or female and the "cis" is unnecessary.

19 BY MR. BLOCK:

20 Q Do you consider the word -- the term 09:38:20  
21 "cisgender male" to be infringing upon your identity as  
22 a male?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: No, I do not.

25 ///

1 BY MR. BLOCK:

2 Q Okay. Who are the individuals that -- that  
3 you know that view the term "cisgender" as infringing  
4 on their own identity?

5 A I could not tell you every person I know that 09:38:43  
6 states that. I have colleagues and coworkers that have  
7 stated that to me in private conversations, family  
8 members that have stated that to me in private  
9 conversations. Even students have stated to me that  
10 they do not like being referred to as cisgender. 09:39:02

11 Q And have any of those people, to the best of  
12 your knowledge, been directly referred to as being  
13 cisgender?

14 A To my knowledge, yes, they have.

15 Q Okay. So -- but you -- you personally don't 09:39:19  
16 view the term "cisgender male" as infringing on your  
17 own identity; correct?

18 A That is correct.

19 Q Okay. So if I use the term "cisgender" during  
20 this deposition, you'll understand what I'm talking 09:39:34  
21 about; correct?

22 A Yes, I understand it is the term commonly used  
23 in this type of matter, legally and professionally.

24 Q Okay. And if -- if I ask you to clarify  
25 whether a particular statement that you made is 09:39:50

1 referring to cisgender males, you -- you would be able  
2 to clarify that for me; correct?

3 MR. FRAMPTON: Object to the form.

4 THE WITNESS: Yes, it is my understanding that  
5 a cisgender male is an individual who is biologically 09:40:04  
6 male and their gender identity is male.

7 BY MR. BLOCK:

8 Q And you know what the term "transgender"  
9 means; right?

10 MR. FRAMPTON: Same objection. 09:40:15

11 THE WITNESS: Yes.

12 BY MR. BLOCK:

13 Q What does it mean?

14 A Transgender is for someone whose gender  
15 identity does not align with their biological sex. 09:40:25

16 Q And you don't have any objection to using the  
17 word "transgender" in this deposition, do you?

18 A No, I do not.

19 Q Okay. And you've used the word "transgender"  
20 in your own writings, haven't you? 09:40:38

21 A That is correct.

22 Q Okay. Do you know what the term "transgender  
23 woman" means?

24 MR. FRAMPTON: Same objection.

25 THE WITNESS: I get confused with transgender 09:40:45

1 woman sometimes because I'm not sure if that means a  
2 trans woman or someone who is transgender that  
3 identifies as a woman.

4 Does that make sense?

5 BY MR. BLOCK: 09:41:00

6 Q Yeah. Well, so do you know what the term  
7 "trans woman" means?

8 A Yes, I do.

9 Q Okay. What -- what does the word "trans  
10 woman" mean to you? 09:41:09

11 A A trans woman is an individual who is  
12 biologically male but whose gender identity is that of  
13 a woman.

14 Q And you've used the term "trans woman" in your  
15 writings, haven't you? 09:41:19

16 A That is correct.

17 Q Okay. So if I ask you to clarify whether the  
18 people you refer to in a question are trans women,  
19 you'll be able to clarify that for me?

20 MR. FRAMPTON: Object to the form. 09:41:34

21 THE WITNESS: Yes, I will do my best.

22 BY MR. BLOCK:

23 Q Okay. And do you know what the term  
24 "transgender girl" means?

25 A Same as with transgender woman, it is 09:41:42

1 sometimes confusing to me if they mean if this is a boy  
2 that identifies as girl or a girl that identifies as  
3 boy.

4 Q How about if I use the term "trans girl,"  
5 will -- do you understand what that would mean? 09:42:01

6 A Yes, I understand "trans girl."

7 Q Okay. And what does trans girl mean to you?

8 A A trans girl is a juvenile/youth/child whose  
9 biological sex is male but who identifies as a girl.

10 Q Okay. You've been using the phrase 09:42:18  
11 "biological sex"; correct?

12 A That is correct.

13 Q What is your understanding of what the term  
14 "biological sex" means?

15 A So sex is a biological variable. Sex is 09:42:29  
16 determined at conception with the conferral of sex  
17 chromosomes.

18 Q And is it your understanding that "biological  
19 sex" refers to anything other than chromosomes?

20 A Yes. 09:42:53

21 Q So what else besides chromosomes does the term  
22 "biological sex" refer to?

23 A So if we are referring to a person who is a  
24 biological male, they would have sex chromosomes of  
25 male and their body system of organization, 09:43:08

1 anatomically and physiologically, would be around the  
2 production of small gametes, which means sperm.

3 Q And how would you refer to the biological sex  
4 of someone with complete androgen insensitivity  
5 syndrome? 09:43:32

6 MR. FRAMPTON: Object to the form.

7 THE WITNESS: My understanding of someone with  
8 complete androgen insensitivity syndrome is they are  
9 biologically male, but they are not receptive to  
10 androgens, but their body is still organized around the 09:43:43  
11 production of sperm.

12 BY MR. BLOCK:

13 Q And how would you refer to the biological sex  
14 of someone with XXY chromosomes?

15 A If I remember correctly -- 09:43:59

16 MR. TRYON: I would like to just object to the  
17 scope.

18 Thank you.

19 MR. FRAMPTON: Objection; form, scope.

20 THE WITNESS: If I remember correctly, XXY is 09:44:08  
21 Turner syndrome, in which a person is biologically  
22 male. They have an extra X chromosome, but they are  
23 still male.

24 BY MR. BLOCK:

25 Q So you define biological sex as male if there 09:44:22

1 is a Y chromosome present?

2 MR. FRAMPTON: Object to the form, scope.

3 THE WITNESS: That is the beginning of sex  
4 determination, is if there is a Y or an X chromosome.

5 BY MR. BLOCK: 09:44:44

6 Q Right. So as to -- to clarify, so as long as  
7 there's a Y chromosome, you, in your understanding of  
8 the term "biological sex," would view that person as  
9 being biologically male?

10 MR. FRAMPTON: Same objections, form and 09:44:56  
11 scope.

12 Go ahead.

13 THE WITNESS: That is my understanding, yes.

14 BY MR. BLOCK:

15 Q Okay. And when -- do you have any opinions on 09:45:02  
16 whether a person with complete androgen insensitivity  
17 syndrome should be allowed to play on sports teams for  
18 girls and women?

19 MR. FRAMPTON: Objection; form and scope.

20 Go ahead. 09:45:28

21 THE WITNESS: So situations such as complete  
22 androgen insensitivity syndrome is very debated in the  
23 sports science community right now on how best to  
24 handle those individuals and where they should  
25 participate in sports. 09:45:41

Page 44

1 BY MR. BLOCK:

2 Q And what's your opinion?

3 MR. FRAMPTON: Same objections.

4 THE WITNESS: So I have been retained as an  
5 expert witness in this matter primarily dealing with 09:45:49  
6 biological male and biological female and not as an  
7 expert on disorders or differences of sexual  
8 development. And so I would say I probably would not  
9 be the best person to offer a statement on where  
10 someone with CAIS should participate. 09:46:05

11 BY MR. BLOCK:

12 Q But you just testified earlier that you view  
13 someone with -- with CAIS as being a biological male,  
14 isn't that so?

15 A That is correct. 09:46:18

16 Q And so if you're providing expert testimony on  
17 the participation of biological males, wouldn't that  
18 include testimony about a biological male with -- in  
19 your words -- with CAIS?

20 MR. FRAMPTON: Objection; form and scope. 09:46:33

21 THE WITNESS: If I had been asked to provide  
22 expert information on that matter, I could perhaps look  
23 more into it, but I have not been asked to provide  
24 expert witness, expert statement on where individuals  
25 with disorders/differences of sexual development should 09:46:52

Page 45



1 participate.

2 BY MR. BLOCK:

3 Q Okay. So you -- you have no expert opinion on  
4 the participation of people with DSDs in sports for  
5 girls and women; right?

09:47:05

6 MR. FRAMPTON: Objection; form and scope.

7 Go ahead.

8 THE WITNESS: In my declaration, there is a  
9 small statement in there about DSDs, and I will stand  
10 by that statement.

09:47:15

11 BY MR. BLOCK:

12 Q All right. Well, let's look to that.

13 If you could turn to that -- that exhibit  
14 and -- and identify for me the statement about DSDs.

15 A Which exhibit number is that?

09:47:34

16 Q That's a good question. I think it's Exhibit  
17 Number -- separate windows are tough. I believe it's  
18 the first one up there, Exhibit 64.

19 So it might be in paragraph 4 of your report,  
20 if you could look at that.

09:48:20

21 A All right. I am looking at paragraph 4.

22 Q Okay. Is this the reference to DSDs that  
23 you're -- that you were referring to just now?

24 A That is correct.

25 Q Okay. So the -- the first sentence -- the

09:48:31

Page 46

1 first two sentences of that paragraph say (as read):

2 "Although disorders of sexual

3 development (DSDs) are sometimes

4 confused with discussions of

5 transgender individuals, the two are

09:48:43

6 different phenomena. DSDs are

7 disorders of physical development.

8 Many DSDs are 'associated with genetic

9 mutations that are now well known to

10 endocrinologists and geneticists.'" "

09:48:57

11 Did I read that correctly?

12 A Yes, you did.

13 Q Okay. And so that's the extent of your expert

14 testimony about DSDs?

15 A That is correct.

09:49:07

16 Q Okay. Do you know if complete androgen

17 insensitivity syndrome is associated with a genetic

18 mutation?

19 MR. FRAMPTON: Object to the form.

20 THE WITNESS: I will stand by that statement

09:49:24

21 which is a quote from the endocrinology --

22 Endocrine Society.

23 BY MR. BLOCK:

24 Q But sitting here today, you don't know whether

25 CAIS is associated with a genetic mutation, do you?

09:49:32

Page 47

1 MR. FRAMPTON: Same objection.

2 THE WITNESS: I do not know off the top of my  
3 head.

4 BY MR. BLOCK:

5 Q Okay. So -- so to the best of your knowledge, 09:49:44  
6 does H.B. 3293 make any distinction between people with  
7 DSDs and people who are transgender?

8 MR. FRAMPTON: Objection; form and scope.

9 THE WITNESS: I would need to refresh my  
10 reading on that bill to see what it states on that 09:50:06  
11 matter.

12 BY MR. BLOCK:

13 Q So -- but the scope of your expert testimony,  
14 when you provide opinions about people who, in your  
15 language, are biological males, you are limiting your 09:50:14  
16 expert opinion to people who are biological males  
17 who -- who are either cisgender males or trans girls  
18 and trans women; is that right?

19 MR. FRAMPTON: Same objections.

20 THE WITNESS: Can you please restate the 09:50:39  
21 question for me?

22 BY MR. BLOCK:

23 Q Yeah. So -- so you're providing testimony  
24 about, quote, biological males; correct?

25 A Biological males and biological females. 09:50:46

1 Q Okay. So in terms of biological males, the  
2 only biological males you're addressing in your  
3 testimony, to -- to use your phrase, biological males,  
4 are cisgender boys and men and trans girls and women,  
5 but not any biological males, in your language, that 09:51:07  
6 have DSDs; is that fair?

7 MR. FRAMPTON: Objection; form and scope.

8 Go ahead.

9 THE WITNESS: Yes, I was not asked to offer  
10 expert opinion on differences or disorders of sexual 09:51:17  
11 development.

12 BY MR. BLOCK:

13 Q All right. Including people who you consider  
14 to be biological males who have DSDs; correct?

15 MR. FRAMPTON: Same objection. 09:51:28

16 THE WITNESS: That is correct.

17 BY MR. BLOCK:

18 Q Okay. Do you know what the term "sex assigned  
19 at birth" refers to?

20 A Yes, I understand the term "sex assigned at 09:51:47  
21 birth."

22 Q Okay. So -- so if I use the term "sex  
23 assigned at birth," you can understand what I'm saying?

24 A Yes, I can understand what you're saying.

25 Q Okay. Great. 09:51:56

1 I have some questions just about your  
2 education and research background, but, you know, I'd  
3 prefer not to belabor them by going through your CV  
4 line by line. So I'm going to ask you questions, and  
5 if you think you need to refer specifically to your CV, 09:52:20  
6 we can do that, but I'm hoping that's not necessary.

7 So as part of your formal education, you never  
8 took any courses regarding transgender people; is that  
9 right?

10 A I did not take a course where the title of the 09:52:34  
11 course was "Transgender Individuals."

12 Q Okay. And did you take a course where  
13 transgender individuals were discussed?

14 A Yes.

15 Q And how many courses? 09:52:52

16 A That would be difficult to say. To give a  
17 number, I mean, I would be speculating right now. It's  
18 been 20 years.

19 Q Do you -- do you have any specific  
20 recollection of any courses where transgender people 09:53:10  
21 were discussed?

22 A I am pretty sure that transgender individuals  
23 were discussed in the undergraduate Abnormal Psychology  
24 class I took. Very possibly in General Psychology.  
25 Possibly discussed in any of the numerous physiology 09:53:25

1 classes as an undergraduate or graduate student.

2 Possibly in the endocrinology class as a graduate  
3 student.

4 Q This is all just possibly; right? You don't  
5 have a specific recollection?

09:53:44

6 A Just thinking, also some of the sociology  
7 classes may have included it. But, again, it might  
8 have; it might not have been. And also, whether that  
9 was a discussion that the instructor initiated or the  
10 students initiated, I couldn't testify at this point.

09:54:00

11 Q Okay. You received your undergrad degree in  
12 1997; right?

13 A That is correct.

14 Q Do you -- do you think it's -- it's plausible  
15 that you had a lot of discussions about transgender  
16 people from 1993 to 1997?

09:54:11

17 A Yes, it's very plausible.

18 Q Okay. Have you ever -- as part of your --  
19 obtaining any -- any of your degrees, did you ever  
20 conduct any research concerning transgender people?

09:54:32

21 A Can you clarify what you mean by "research"?

22 Q I -- I mean original research, where you have  
23 a hypothesis and you test it.

24 A So, no, I did not conduct any primary research  
25 on transgender individuals.

09:54:55

Page 51

1 Q Okay. Did you conduct any other form of  
2 research other than what you referred to as primary  
3 research?

4 A I probably looked for research papers or maybe  
5 saw research papers on transgender individuals. Again, 09:55:07  
6 it may have been as part of an assigned reading in a  
7 class, or it may have been something come across in  
8 other reading for general knowledge.

9 Q You're just saying that this could have  
10 happened, but you don't have a specific recollection of 09:55:20  
11 it, do you?

12 A That is correct. I did not write down in a  
13 diary when I would read a paper.

14 Q Well, no, but you -- sitting here today, you  
15 don't have any recollection of ever reading a paper on 09:55:30  
16 transgender people as part of obtaining your  
17 undergraduate, your Master's or your Ph.D. degrees;  
18 correct?

19 A I don't think that's what I said.

20 Q Well, so -- 09:55:44

21 A I think I said I -- I might have. I didn't  
22 say that I did not.

23 Q Well, but you don't have any affirmative  
24 memory of doing so?

25 MR. FRAMPTON: Object to the form. 09:55:55

1 THE WITNESS: What do you mean by "affirmative  
2 memory"?

3 BY MR. BLOCK:

4 Q Well, by -- by saying you might have, that --  
5 that's different to me than saying you remember doing 09:56:04  
6 it in some form, but don't remember the exact time or  
7 place. So I'm trying to clarify whether you remember  
8 doing it, but can't, you know, put your finger on  
9 exactly when it happened, or whether you're saying you  
10 can't rule out the possibility that you did it. 09:56:20

11 So are you saying that you can't rule out the  
12 possibility that you did it?

13 A So I am saying that it's very likely that I  
14 had discussions in classes on transgender individuals.  
15 It's very likely that there was a paper that I read or 09:56:35  
16 more than one paper regarding transgender individuals,  
17 possibly even a textbook chapter.

18 Q Okay. And do you consider reading a textbook  
19 chapter or paper for class to be academic research?

20 A Reading a scholarly paper would be considered 09:56:56  
21 academic research as it could lead to something like a  
22 literature review, a meta-analysis, and it is an  
23 essential part of the research process.

24 Q Right. But you didn't do any reading as part  
25 of preparing for literature review or meta-analysis; 09:57:11



1 correct?

2 A I did not include any in my literature review  
3 or meta-analysis. I may have done reading as part of  
4 my Master's thesis and doctoral dissertation.

5 I know for a fact, because of the topic of my 09:57:38  
6 Master's thesis and doctoral dissertation, I had to  
7 read very widely on steroid hormone, biogenesis and  
8 actions.

9 Q So we had a discussion about some of this two  
10 years ago. Do you think your memory about what -- your 09:57:59  
11 readings was more accurate two years ago or more  
12 accurate today?

13 MR. FRAMPTON: Object to the form.

14 THE WITNESS: I would say more accurate today  
15 because I have -- since you asked me this two years 09:58:14  
16 ago, I've thought about it more to remember, okay, did  
17 this happen in Abnormal Psychology, in Sports  
18 Psychology, something like that.

19 BY MR. BLOCK:

20 Q Okay. So I just want to be clear about a 09:58:23  
21 distinction between conducting reading as in a -- as a  
22 class assignment and conducting reading as part of your  
23 research process. All right? Does that distinction  
24 make sense to you?

25 A Yes. 09:58:41

1 Q Okay. So you've -- you've talked about maybe  
2 reading a paper or a chapter as part of a class  
3 assignment; correct?

4 A Yes.

5 Q Okay. So in terms of reading as part of your 09:58:52  
6 own independent research process, do you have any  
7 recollection of doing any reading about transgender  
8 people as part of your own independent research process  
9 while obtaining your degrees?

10 A I don't have a specific recollection of doing 09:59:09  
11 that independently while reading my -- while performing  
12 my Master's and doctoral research, but, again, I might  
13 have.

14 Q Okay. So since receiving your doctorate until  
15 the time when you first reached out to ADF, have you -- 09:59:28  
16 had you ever conducted any research concerning  
17 transgender people?

18 A Once again, please clarify what you mean by  
19 "research."

20 Q All right. Well, let's do primary research. 09:59:42

21 A No, I had not done primary research of  
22 transgender individuals.

23 Q Had you ever conducted any literature review  
24 regarding transgender people?

25 A I have not formally written a literature 09:59:56

1 review.

2 Q Had you ever written a meta-analysis about  
3 transgender people?

4 A No, I had not performed a meta-analysis  
5 regarding transgender individuals. 10:00:07

6 Q Okay. So what other professional research  
7 might you have done regarding transgender people?

8 A Trying to keep up with the legislation in  
9 sports regarding the participation of transgender  
10 individuals and then on seeing the legislation, out of 10:00:25  
11 my own curiosity, looking to see what research was  
12 informing that legislation.

13 Q Okay. In terms of original research that  
14 you've done, have any of the subjects in your original  
15 research been transgender, to the best of your 10:00:41  
16 knowledge?

17 A To the best of my knowledge, none of any  
18 subjects have been transgender.

19 Q Okay. Have you worked with transgender people  
20 in any capacity? 10:00:52

21 MR. FRAMPTON: Object to the form.

22 THE WITNESS: I -- I think there are  
23 individuals at the university that are transgender that  
24 I have worked with on committees or other things.

25 ///

1 BY MR. BLOCK:

2 Q Okay. How many transgender people do you  
3 think you've met?

4 MR. FRAMPTON: Same objection.

5 THE WITNESS: I can think of two by name and 10:01:22  
6 others that I've met, but -- I've met a lot of people,  
7 and so to try and come up with a number that were  
8 transgender is going to be very, very difficult.

9 BY MR. BLOCK:

10 Q Have you ever appeared on any podcasts? 10:01:41

11 A Yes.

12 Q Which ones?

13 A I probably can't name all of them.

14 Q Okay.

15 A I can do my best. 10:01:55

16 Q Great.

17 A So there was a podcast Muscle for Life with --  
18 with Mike Matthews, I think. I was on the Megyn Kelly  
19 podcast. I was on Munk Debates podcast. I was on  
20 Governor Ricketts' podcast. There's another one out 10:02:18  
21 there that I remember the podcast. I don't remember  
22 the name of it.

23 Q Do you remember approximately when the  
24 Megyn Kelly podcast was?

25 A A little less than a year ago, if I remember 10:02:39

1 right.

2 Q And what was the topic of that podcast?

3 A That was regarding the participation of  
4 biological males in female sports.

5 Q And what was the Munk Debates podcast? 10:02:51

6 A That was also about biological males  
7 participating in female -- in women's sports.

8 Q And when -- when was that podcast?

9 A Last summer, maybe late last summer.

10 Q Okay. And when you refer to biological males 10:03:12  
11 in these podcasts, did you discuss at all people with  
12 DSDs?

13 A If we did, it was not a major topic of  
14 discussion.

15 Q Okay. So your -- your podcast with 10:03:24  
16 Governor Ricketts, that's on his show "The Nebraska  
17 Way"; is that -- is that correct?

18 A That is correct.

19 Q Okay. And you appeared on September 1st,  
20 2021? 10:03:42

21 A I will trust you on the date on that. I don't  
22 remember myself.

23 Q All right. Does that sound around the time?

24 A That sounds like the right time period.

25 MR. BLOCK: Okay. Great. 10:03:53

1 So I'm going to introduce an exhibit marked 68  
2 and if you can open it up.

3 The concierge -- it's an -- it's a video clip,  
4 and the concierge is going to have to play it for us.

5 But let me know what appears on -- on your 10:04:18  
6 screen before -- before I ask the concierge to -- to  
7 play it.

8 Do you see a file?

9 (Exhibit 68 was marked for identification  
10 by the court reporter and is attached hereto.) 10:04:28

11 THE WITNESS: I see Exhibit 068 - Clip, space,  
12 2005.

13 BY MR. BLOCK:

14 Q Okay. I'm going to have -- I'm going to ask  
15 the concierge to play the clip now. And it's -- it's a 10:04:37  
16 little bit over a minute long. I didn't want to -- you  
17 to think that I've cut anything off here. And then  
18 after the clip plays, I'll ask you a few questions  
19 about it.

20 Does that sound okay? 10:04:50

21 A Will the clip show up in the -- in this Zoom  
22 meeting, or is it going to be a different window?

23 Q It's going to show up as a screen share --

24 A Okay.

25 Q -- right now. 10:05:05

1 Can you see the screen share?

2 A Yes.

3 Q Great.

4 (Video clip played.)

5 MR. BLOCK: Thank you to the concierge. 10:06:32

6 BY MR. BLOCK:

7 Q Does -- does this video clip appear to be an  
8 accurate excerpt of your interview with  
9 Governor Ricketts?

10 A Yes, that's me. 10:06:41

11 Q Okay. Do you still agree with everything you  
12 said in that video clip?

13 MR. FRAMPTON: Objection; form and scope.

14 MR. TRYON: Objection; scope.

15 BY MR. BLOCK: 10:06:50

16 Q You can answer.

17 A Can you repeat your question, please?

18 Q Do you still agree with everything you said in  
19 that video clip?

20 A Yes, I do. 10:06:58

21 Q Okay. You're not a mental health expert;  
22 right?

23 A That is correct.

24 Q You don't have any education or training  
25 that -- that would provide a basis for you to offer an 10:07:10

1 expert opinion on the proper healthcare for transgender  
2 youth, do you?

3 MR. FRAMPTON: Objection; form and scope.

4 Go ahead.

5 THE WITNESS: No, I would not be called upon 10:07:19  
6 to offer treatment for transgender individuals.

7 BY MR. BLOCK:

8 Q But my question is, to offer an expert opinion  
9 on treatment for transgender individuals, you don't  
10 have any, you know, credentials that would allow you to 10:07:34  
11 provide an expert opinion on that topic, do you?

12 MR. FRAMPTON: Same objection.

13 Go ahead.

14 THE WITNESS: I have not been asked to offer  
15 an expert opinion on the psychological or psychiatric 10:07:44  
16 care of transgender individuals.

17 BY MR. BLOCK:

18 Q But my question is, do you have the  
19 credentials and training that would allow you to offer  
20 such an opinion, if you were asked? 10:07:52

21 MR. FRAMPTON: Same objection.

22 THE WITNESS: No, I do not have those  
23 credentials or degrees.

24 BY MR. BLOCK:

25 Q Okay. In this clip, you used the word 10:08:07



1 "transgenderism"; right?

2 A That is correct.

3 Q Is that a medical term?

4 MR. FRAMPTON: Objection; form and scope.

5 THE WITNESS: I'm not sure what you mean, is 10:08:19  
6 it a medical term?

7 BY MR. BLOCK:

8 Q What does transgenderism mean?

9 A An individual who is transgender.

10 Q Okay. In any of the -- the scholarly articles 10:08:28  
11 that you've read about transgender people, have any of  
12 them used the term "transgenderism"?

13 A I cannot recall, to answer that question, if  
14 they have or have not.

15 Q Okay. In the clip, you mentioned Ben Shapiro; 10:08:45  
16 correct?

17 A That is correct.

18 Q Who is Ben Shapiro?

19 A Ben Shapiro is an individual that does a lot  
20 of podcasts, news clips, news interviews, speaking at 10:09:00  
21 organizations on social and political matters.

22 Q Do you -- do you think he's a reliable source  
23 of authority on mental healthcare for transgender  
24 youth?

25 MR. FRAMPTON: Objection; form and scope. 10:09:19

1 THE WITNESS: In the role that he is filling,  
2 I think Ben Shapiro is able to provide reliable  
3 information on what has been written in these matters.

4 BY MR. BLOCK:

5 Q Okay. And reliable enough that you -- you 10:09:32  
6 thought it was worth repeating to the audience of the  
7 podcast; correct?

8 MR. FRAMPTON: Same objections.

9 THE WITNESS: That is correct.

10 BY MR. BLOCK: 10:09:49

11 Q Okay. In what context have you heard his  
12 opinions about transgender youth?

13 A Do you mean context or format?

14 Q Let's start with format.

15 A So in a number of videos and radio clips and 10:10:02  
16 seeing on the news, I have seen Ben Shapiro make  
17 statements regarding transgender individuals.

18 Q And has that affected your own opinion on  
19 these issues?

20 MR. FRAMPTON: Objection; form and scope. 10:10:21

21 THE WITNESS: No, I don't think what he has  
22 said has affected my opinion.

23 BY MR. BLOCK:

24 Q Has it affected your opinion on mental  
25 healthcare for transgender youth? 10:10:37

1 MR. FRAMPTON: Same objection.

2 THE WITNESS: I don't think it has affected my  
3 opinion on healthcare for transgender youth.

4 BY MR. BLOCK:

5 Q Okay. Is new toy syndrome a medical term? 10:10:47

6 MR. FRAMPTON: Same objections.

7 THE WITNESS: No.

8 BY MR. BLOCK:

9 Q Okay. Do you think that receiving  
10 gender-affirming care is analogous to playing with a 10:10:56  
11 new toy?

12 MR. FRAMPTON: Objection; form and scope.

13 THE WITNESS: I'm sorry, can you state the --  
14 restate the question?

15 BY MR. BLOCK: 10:11:13

16 Q Yeah. Do you -- do you think transgender  
17 youth receiving gender-affirming care is analogous to a  
18 person playing with a new toy?

19 MR. FRAMPTON: Same objections.

20 THE WITNESS: In the context that I quoted 10:11:22  
21 Ben Shapiro, in that interview, it is a good analogy.

22 BY MR. BLOCK:

23 Q How is it a good analogy?

24 A As I explained in that, also as it was  
25 explained by Ben Shapiro, when people get a new toy, 10:11:37

1 they're often very happy with it, and then the newness  
2 wears off. That is drawn as an analogy to what has  
3 been demonstrated in scholarly literature about  
4 transgender individuals.

5 Q What scholarly literature? 10:11:53

6 MR. FRAMPTON: Objection; form and scope.

7 THE WITNESS: The research is cited on the  
8 SEGM web page.

9 BY MR. BLOCK:

10 Q What's SEGM? 10:12:05

11 A I may not be able to tell you precisely, but  
12 it is something like Society for Evidence-Based Gender  
13 Medicine.

14 Q And why have you been reading the SEGM web  
15 page? 10:12:25

16 MR. FRAMPTON: Objection; form and scope.

17 THE WITNESS: It is a good place to find  
18 information about transgender individuals to help make  
19 sure that I am staying current on the information in  
20 this area. 10:12:34

21 BY MR. BLOCK:

22 Q How is information about the mental healthcare  
23 of transgender individuals relevant to you in your  
24 work?

25 MR. FRAMPTON: Same objections. 10:12:48

Page 65

1 THE WITNESS: The mental healthcare is often  
2 associated with the use of either puberty blockers,  
3 testosterone suppression, estrogen administration,  
4 which then has physiological effects.

5 BY MR. BLOCK: 10:13:06

6 Q So -- so you read about -- well, I -- I guess,  
7 could you explain further? How -- how is utility of  
8 the mental healthcare relevant to your opinion about  
9 physiological issues and athletic advantages?

10 MR. FRAMPTON: Same objection, form and scope. 10:13:27

11 THE WITNESS: If an individual is being given  
12 a physiologically active medicine, such as a puberty  
13 blocker, such as testosterone suppression or  
14 administration of estrogen, that will affect their  
15 physiology, which then may or may not have an affect on 10:13:47  
16 their ability to compete in athletics.

17 So it is important to know what is being done.

18 BY MR. BLOCK:

19 Q Does -- does the mental health impacts of  
20 those treatments matter in terms of the physiological 10:14:04  
21 effects?

22 A If the mental health treatment includes the  
23 administration of physiological substances, then it  
24 affects physiological responses.

25 Q Yeah, so, I guess, that's not really answering 10:14:25

1 my question.

2 So you -- you -- you talked about how, in your  
3 opinion, the positive mental effects of  
4 gender-affirming care for some people would -- are like  
5 a new toy, that they have a positive effect and then 10:14:39  
6 that positive mental health effect wears off, and my  
7 question is whether the -- the fact that you alleged  
8 that positive mental health effect would wear off has  
9 any implication for the physiological results of having  
10 taken that medication. 10:15:04

11 Does that make sense?

12 MR. TRYON: Objection --

13 MR. FRAMPTON: Objection; form.

14 MR. TRYON: -- form.

15 THE WITNESS: I would ask you to try and break 10:15:11  
16 that question down a little more.

17 BY MR. BLOCK:

18 Q Sure.

19 A I'm not sure where you're going.

20 Q Sure. So the -- if -- if -- assuming that -- 10:15:17  
21 taking it as an assumption, that puberty blockers and  
22 gender-affirming hormones had no positive health  
23 effects for mental health, how would that assumption  
24 impact your opinion on the physiological effects of  
25 taking those medications? 10:15:43

Page 67

1 MR. FRAMPTON: Objection; form and scope.

2 Go ahead.

3 THE WITNESS: Well, puberty blockers and  
4 testosterone suppression and estrogen administration  
5 are physiological active substances. What they do for 10:15:57  
6 mental health compared to what they do for athletic  
7 performance and physiological responses might be  
8 separate issues.

9 BY MR. BLOCK:

10 Q Okay. So if they're separate issues, why do 10:16:08  
11 you read about the mental health effects of taking  
12 those medications?

13 MR. FRAMPTON: Same objections.

14 THE WITNESS: I think I previously answered  
15 this question, to know what are the treatments that are 10:16:27  
16 being used that could then affect physiological  
17 responses to exercise.

18 BY MR. BLOCK:

19 Q Okay. So what other sources of information do  
20 you consult on the -- the mental health effects of 10:16:39  
21 puberty blockers and gender-affirming hormones?

22 MR. FRAMPTON: Objection; scope.

23 THE WITNESS: So I will find scholarly  
24 articles and read those to find information. A lot of  
25 the information, if I find it on a web page, I will 10:17:01

1 look to see if it is to a scholarly journal, scholarly  
2 article that's reputable, but then I can verify that  
3 the information on the web page is valid, at least  
4 based on what has been presented in scholarly  
5 literature. Of course, you see things in the news as 10:17:18  
6 well; right?

7 BY MR. BLOCK:

8 Q Is there any scholarly article that -- that  
9 likens gender-affirming care to a new toy?

10 MR. FRAMPTON: Objection; form and scope. 10:17:32

11 THE WITNESS: I could not say.

12 BY MR. BLOCK:

13 Q Okay. What scholarly articles, sitting here  
14 today, can -- can you think of having read on the topic  
15 of mental healthcare for transgender youth? 10:17:46

16 MR. FRAMPTON: Same objection; form and scope.

17 THE WITNESS: So there was a review on the  
18 effects of puberty blockers that was put out by Sweden,  
19 Karolinski Institute, and so I read that article and  
20 looked up a number of the articles that were referenced 10:18:11  
21 in there. Similar type of thing came out of  
22 Great Britain, their national health organization,  
23 something like that. And so I looked at a lot of those  
24 articles.

25 I -- I have also, again, coming across some on 10:18:24



1 PubMed or Google Scholar. I've seen other articles  
2 looking at the effects of hormone treatment in  
3 transgender individuals and measures of mental health.

4 BY MR. BLOCK:

5 Q And can you remember any of the articles on 10:18:39  
6 PubMed or Google Scholar?

7 A I cannot remember them by author or title.

8 Q Okay. Have you read the Endocrine Society  
9 guidelines on providing gender-affirming care to  
10 transgender people? 10:18:58

11 A I --

12 MR. FRAMPTON: Objection; scope.

13 Go ahead.

14 THE WITNESS: I have read the information on  
15 the web page. I have read the article. I cannot 10:19:04  
16 remember which journal it's published in.

17 BY MR. BLOCK:

18 Q Well, I'm sorry, what -- what -- what are you  
19 referring to when you say a web page and an article?

20 A So the Endocrine Society has a web page 10:19:22  
21 regarding the administration of puberty blockers and  
22 estrogen -- or testosterone suppression, estrogen  
23 administration for -- for transgender individuals. And  
24 so I have read through that web page, and there is an  
25 article associated with the information on that web 10:19:42

Page 70

1 page that was published in a scholarly journal.

2 Q Okay. And -- and that -- that would be the --  
3 the -- the 2017 guidelines for care of people with  
4 gender dysphoria and gender incongruence?

5 A That is my recollection, yes. 10:19:57

6 Q When did you read that?

7 A Sometime in the past year.

8 Q So at the time of our past deposition, you  
9 hadn't read that yet; is that correct?

10 A As I recall, that is correct. 10:20:14

11 Q Okay. But -- but since then, you have read  
12 it?

13 A Yes. You seem to make a strong suggestion  
14 that I should read that.

15 Q Okay. Did you learn anything from reading it? 10:20:26

16 A Yes, I did.

17 Q What did you learn?

18 A I learned that the recommendations of the  
19 Endocrine Society for testosterone suppression result  
20 in much, much lower testosterone concentration than 10:20:39  
21 those recommended by world -- or, sorry, by world sport  
22 or by the Olympics.

23 Q Great. Just to close the loop, can you think  
24 of any other source of information or political  
25 commentator you've heard and talk about transgender 10:21:05

Page 71

1 youth who you think provides a good description of the  
2 science?

3 MR. FRAMPTON: Objection; form and scope.

4 THE WITNESS: So I've cited a number of papers  
5 in my article -- or, sorry, in my expert declaration. 10:21:25  
6 So I've read those articles of scholars.

7 As far -- as far as political commentary, it's  
8 all over the place these days, so it's hard to identify  
9 who has or has not opined on that.

10 Q All right. Do you -- I'm going to turn to a 10:21:42  
11 new line of questions. Do you need a break before  
12 then?

13 A Yeah, let's take five.

14 Q Okay. Great.

15 THE VIDEOGRAPHER: We are off the record at 10:21:59  
16 10:22 a.m.

17 (Recess.)

18 THE VIDEOGRAPHER: We are on the record at  
19 10:29 a.m.

20 MR. BLOCK: Great. 10:29:11

21 BY MR. BLOCK:

22 Q I want to go back in time and ask you about  
23 the time that you first reached out to ADF on this  
24 issue of the participation of transgender athletes.

25 Do you remember who you contacted at ADF? 10:29:30

Page 72

1 A I do not remember who I contacted.

2 Q And do you remember why you knew that ADF was  
3 the organization to contact?

4 A I saw a news clip or information online about  
5 the Soule versus CIAC case, and it identified Alliance 10:29:57  
6 Defending Freedom as representing Selina Soule.

7 Q Okay. And, you know, at the time you first  
8 contacted ADF, had you done any research on the -- the  
9 effects of puberty blockers or gender-affirming  
10 hormones on transgender people? 10:30:19

11 A Once again, what do you mean by "research"?

12 Q Have you -- had you read anything on the -- on  
13 the physiological effects of gender-affirming care at  
14 the time you first reached out to ADF?

15 A Yes, I had. 10:30:39

16 Q What had you read?

17 A I had read some articles on the effects of  
18 gender-affirming hormone therapy, to use your  
19 terminology on that, on various physiological factors,  
20 such as muscle size or strength or muscle mass, those 10:30:55  
21 types of things.

22 Q You -- you had already read that research  
23 before you reached out to ADF?

24 A I had read some.

25 Q Okay. And had you read that research before 10:31:10

1 you saw the news item about the transgender runners in  
2 Connecticut?

3 A Yes.

4 Q Okay. So -- so you -- you had previously had  
5 occasion to read research on the effects of 10:31:26  
6 gender-affirming hormones on muscle mass, and then you  
7 saw the news clip about the runners in Connecticut, and  
8 then you contacted ADF? That's the chronology of how  
9 it went?

10 MR. FRAMPTON: Objection; form. 10:31:39

11 THE WITNESS: Yes, that sounds like a correct  
12 timeline.

13 BY MR. BLOCK:

14 Q Okay. And what -- what would have prompted  
15 you to -- to do any research specifically on the 10:31:48  
16 effects of gender-affirming hormones before seeing the  
17 news item about transgender people in Connecticut?

18 A As I had mentioned previously, staying up to  
19 date on what the laws are or the rules, I guess would  
20 be a more appropriate way to say it, regarding the 10:32:10  
21 participation of transgender women in women's sports or  
22 trans women in women's sports. Student questions,  
23 asking about that. Particularly after 2019, when  
24 Cecé Telfer won the 400-meter hurdles in Division II,  
25 because I had some students that were there and had 10:32:35

1 questions.

2 Q What do you mean, that were there?

3 A I have students that are student athletes that  
4 compete in Division II women's track and field and were  
5 at that national championship where Cecé Telfer won the 10:32:53  
6 400-meter hurdles.

7 Q And were those students upset that Cecé Telfer  
8 had won?

9 MR. FRAMPTON: Form.

10 THE WITNESS: The students had questions and 10:33:05  
11 many of them stated questions such as how can that be  
12 fair.

13 BY MR. BLOCK:

14 Q So were they upset?

15 MR. FRAMPTON: Same objection. 10:33:20

16 THE WITNESS: I guess I would need more  
17 clarification on "upset."

18 BY MR. BLOCK:

19 Q So they didn't think it was fair?

20 A That would be correct. 10:33:32

21 Q And so in response to those student questions,  
22 you -- you started doing research; is that right?

23 A I had been looking it prior to the student  
24 questions, but in response to the student questions, I  
25 suppose you could say I tried to dig deeper. 10:33:52

Page 75

1 Q Okay. So what -- what -- how had you been  
2 looking into it before the student questions?

3 A Before the student questions, I would look at  
4 the policies as put out by the NCAA, put out by the  
5 N -- IOC and tried to look at research that informed 10:34:08  
6 those policies by searching Google Scholar, PubMed,  
7 reading news articles about it and see if they had  
8 links or information on research.

9 Q And what about Cecé's participation did the  
10 students think were unfair? 10:34:26

11 A Cecé is a biological male and was competing in  
12 women's sports.

13 Q And why did they think that was unfair?

14 A They thought it was unfair for a biological  
15 male to compete in women's sports. 10:34:43

16 Q And when you say you did earlier research on  
17 NCAA policy and the IOC, you know, what had prompted  
18 you to do that research?

19 A It's an important topic in sports, in my  
20 field. It's possible that the textbook I was using at 10:35:03  
21 the time had a statement on it.

22 Q Had you done any research on the participation  
23 of Caster Semenya in the IOC?

24 A I have read some news articles on  
25 Caster Semenya and probably heard some things on 10:35:20

1 podcasts about Caster Semenya.

2 Q Okay. But you didn't do any research about  
3 that?

4 A I -- again, more than news articles, I cannot  
5 recall a specific article that said this was 10:35:37  
6 Caster Semenya's medical condition in the scholarly  
7 literature.

8 Q Okay. But you were more interested in doing  
9 research on transgender athletes than on athletes like  
10 Caster Semenya; is that fair? 10:35:54

11 MR. FRAMPTON: Objection; form.

12 THE WITNESS: That would be fair to say.

13 BY MR. BLOCK:

14 Q Okay. And why is that?

15 A We are dealing with separate issues. 10:36:06  
16 Disorders of sexual development are not the same as a  
17 transgender individual.

18 Q And so why were you more interested in the  
19 participation -- researching the participation of  
20 transgender individuals as opposed to individuals with 10:36:20  
21 DSDs?

22 MR. FRAMPTON: Same objection.

23 THE WITNESS: The policies seem to, if I  
24 recall, state "transgender individuals." The student  
25 questions were about transgender individuals. The 10:36:35

Page 77



1 stuff I was seeing in the news was about transgender  
2 individuals.

3 BY MR. BLOCK:

4 Q When did the topic of the participation of  
5 transgender individuals in -- in sports first come to 10:36:45  
6 your attention?

7 A That would be very challenging to say, but I  
8 would say sometime after 2004.

9 Q Why sometime after 2004?

10 A That seems to be the first IOC policy I 10:37:04  
11 remember that addressed transgender individuals.

12 Q And when did a transgender individual first  
13 participate in the Olympics?

14 A I don't know.

15 Q You have no idea? 10:37:23

16 A No.

17 Q Do you know if it was, like, before 2010?

18 A I don't know.

19 Q Okay. You have no -- do you have any  
20 knowledge or recollection of any transgender people 10:37:45  
21 participating in the Olympics?

22 A Would you consider the participation of  
23 Bruce Jenner to be a transgender individual  
24 participating in the Olympics?

25 Q About a -- a -- a transgender person competing 10:38:01

1 post transition.

2 A So I do know of someone that has done that.

3 Q Who?

4 A Laurel Hubbard.

5 Q Okay. Anyone before her? 10:38:19

6 A I cannot recall anyone before that.

7 Q Okay. When did you first -- when did you  
8 first become -- well, let me -- I'll -- I'll -- I'll  
9 come back to that.

10 When -- when is the first time a transgender 10:38:42  
11 person -- a transgender woman competed in women's  
12 tennis events?

13 A I -- I don't know.

14 Q You -- you have no idea?

15 A There's something I seem to recall of a 10:39:05  
16 situation that was in the '70s or '80s, but I can't  
17 recall off the top of my head more specifics.

18 Q Does the name Renée Richards refresh your  
19 recollection about it?

20 A So as you mention that, yes, the name 10:39:24  
21 Renée Richards playing tennis -- again, I couldn't, at  
22 this point in time, put it in a timeframe other than I  
23 think it was probably before I was even in college.

24 Q Okay. And when did you first become aware  
25 that that had happened? 10:39:40

1 A Sometime in the past 15 or so years. In my  
2 readings, I remember seeing something about  
3 Renée Richards.

4 Q Okay. And did the readings -- what did the  
5 readings say about her? 10:39:55

6 A I can't recall at this point in time.

7 Q Okay. And did you have any feelings about  
8 whether it was fair for her to be participating in  
9 women's tennis in the '70s?

10 MR. FRAMPTON: Objection; form and scope. 10:40:06  
11 Go ahead.

12 THE WITNESS: I -- I would, once again, go  
13 back to my statement that if Renée Richards was a  
14 biological male, then biological males have advantages  
15 over biological females in sports. 10:40:23

16 BY MR. BLOCK:

17 Q Yeah, but I'm just -- I'm asking about, sir,  
18 when you formed an opinion about -- about  
19 Renée Richards, if you do -- if you did form an opinion  
20 about Renée Richards, like when you -- when you first 10:40:35  
21 heard about it, did you have an opinion about it being  
22 fair or unfair?

23 MR. FRAMPTON: Same objection.

24 MR. TRYON: Objection.

25 THE WITNESS: So I -- I think I answered that 10:40:46

1 when I stated that biological males should not be  
2 competing in women's sports.

3 BY MR. BLOCK:

4 Q Okay. So -- but you had that opinion the  
5 first time you heard about Renée Richards; right? 10:40:58

6 MR. FRAMPTON: Same objections.

7 THE WITNESS: Again, where I can't put in a  
8 specific timeframe when I first heard about  
9 Renée Richards, I can't say if Renée Richards  
10 influenced my opinion one way or another or what my 10:41:15  
11 opinion was before reading that article.

12 BY MR. BLOCK:

13 Q So did you have an opinion about the  
14 participation of transgender athletes in women's sports  
15 before you did further research on the topic? 10:41:32

16 MR. FRAMPTON: Objection; form and scope.

17 THE WITNESS: Well, as long as I can recall,  
18 sports has been separated. So you have sports for men,  
19 meaning biological men, and sports for women, meaning  
20 biological women, and that separation has been there. 10:41:51  
21 Again, as long as I can recall, my knowledge of anatomy  
22 and physiology, since I have been involved in study of  
23 anatomy and physiology as a student, indicates there  
24 are differences.

25 ///

1 BY MR. BLOCK:

2 Q Okay. And so -- so that was your -- that was  
3 your sort of baseline assumption before you conducted  
4 research, that -- that it would be unfair to allow a  
5 transgender woman to participate in women's sports? 10:42:16

6 MR. FRAMPTON: Objection --

7 MR. TRYON: Objection.

8 MR. FRAMPTON: -- form.

9 THE WITNESS: I think it would be fair to say  
10 that based on the experience that sports have been 10:42:26  
11 separated by sex and knowing of the differences between  
12 biological males and biological females, there's a --  
13 they should be separated on sex.

14 BY MR. BLOCK:

15 Q All right. Just going to -- going on to a -- 10:42:47  
16 a new topic now.

17 In your report, you say that even before  
18 puberty, prepubertal boys outperform prepuberto --  
19 prepubertal girls in athletic competition; right?

20 A Yes, I state that in my report. 10:43:08

21 Q Okay. And you -- and you attribute those  
22 differences in performances to biological factors  
23 instead of social ones?

24 MR. FRAMPTON: Objection; form.

25 You can -- 10:43:17

1 THE WITNESS: Yes, biological factors are the  
2 primary reason that boys outperform girls in athletic  
3 events.

4 BY MR. BLOCK:

5 Q Yeah, so -- but for prepubertal boys and 10:43:29  
6 prepubertal girls, you attribute their difference in  
7 performance to biological factors?

8 A That is correct.

9 Q Okay. What biological factors provide an  
10 advantage to prepubertal boys over prepubertal girls? 10:43:48

11 A Boys have more lean body mass, which includes  
12 more lean muscle mass, than girls. There are perhaps  
13 other factors that contribute to that more lean body  
14 mass and more muscle mass.

15 Q What does that -- what does that mean, there 10:44:09  
16 other factors that contribute to the more lean body  
17 mass and lean muscle mass?

18 A Well, having a Y chromosome compared to being  
19 XX chromosome, there are a multitude of genes in  
20 muscles that respond to the Y chromosome differently 10:44:30  
21 than they do to X chromosomes.

22 Q And is there any research on how they respond  
23 before puberty?

24 A The research is focused on the fact that there  
25 is a difference in lean body mass before puberty. 10:44:50

1 Q Okay. So besides --

2 A To the best of my knowledge.

3 Q Sorry, I didn't mean to cut you off.

4 Besides lean body mass and lean muscle mass,  
5 are there any other physiological differences connected 10:45:01  
6 to athletic performance between boys and girls --

7 MR. FRAMPTON: Same objection.

8 BY MR. BLOCK:

9 Q -- before puberty?

10 A Yes. There are differences in overall growth 10:45:12  
11 between boys and girls, as evidenced by the CDC and the  
12 World Health Organization having separate growth charts  
13 for both male and female fetuses and for boys and  
14 girls.

15 Q But -- but in terms of physiological 10:45:25  
16 characteristics associated with athletic performance,  
17 what other physiological differences besides 10 percent  
18 difference in lean body mass and lean muscle mass?

19 MR. FRAMPTON: Objection; form:

20 THE WITNESS: I would say -- that is the one 10:45:43  
21 that we will focus on because that is the one that has  
22 been fairly well demonstrated. There has to be  
23 something else that contributes that lean body mass  
24 biologically.

25 ///

1 BY MR. BLOCK:

2 Q Okay. Do you -- but you can't think of any  
3 other measurable factor besides lean body mass that is  
4 tied to athletic performance advantages for prepubertal  
5 boys over prepubertal girls; right? 10:46:21

6 MR. FRAMPTON: Objection; form.

7 Go ahead.

8 THE WITNESS: Well, the paper by Eiberg that's  
9 cited in my report demonstrated differences in VO2 max,  
10 even when controlled for lean body mass, it seemed like 10:46:33  
11 the boys' VO2 max was higher.

12 BY MR. BLOCK:

13 Q Okay. Did the McManis article also confirm  
14 those findings?

15 A I would need to look at the McManis article to 10:46:46  
16 refer. I cannot remember if McManis -- it was written  
17 after Eiberg, I think, but I cannot remember if they  
18 cite Eiberg.

19 Q Okay. Well, we might -- we might come back to  
20 that. 10:47:33

21 The difference in lean body mass and lean  
22 muscle mass that you refer to in your report is a  
23 10 percent difference?

24 MR. FRAMPTON: Objection; form.

25 Go ahead. 10:47:40



1 THE WITNESS: The 10 percent number is stated  
2 in the article by McManis.

3 BY MR. BLOCK:

4 Q Do you have any other knowledge of the  
5 difference besides 10 percent? 10:47:49

6 A I cite several articles demonstrating  
7 difference in body composition in children prepuberty.  
8 I would need to look at those articles to either  
9 calculate the difference myself or see if they specify  
10 the difference. 10:48:05

11 Q But in your report, you -- you quoted the  
12 10 percent figure; correct?

13 A That is correct.

14 Q Okay. If you could turn to your report, which  
15 I believe is -- is Exhibit 46 -- 64. I got that 10:48:24  
16 flipped.

17 A All right.

18 Q Thank you. I'm going to point you to a  
19 specific paragraph in a second.

20 Paragraph 42 on page 17. 10:49:27

21 A Sorry, the page numbering on the document is  
22 different than the page number that Acrobat --

23 Q No.

24 A -- is taking me to, so it will take me a  
25 second, sorry. 10:49:59

1 Q Sure thing.

2 A All right. Paragraph 42.

3 Q You say (as read):

4 "No -- No single physiological

5 characteristic alone accounts for all 10:50:05

6 or any one of the measured advantages

7 that men enjoy in athletic

8 performance."

9 Do you see that?

10 A Yes, I do. 10:50:13

11 Q Okay. So does a difference in lean body mass

12 account for all or any one of the measured advantages

13 that men enjoy in athletic performance?

14 A Lean body mass is a major factor that provides

15 men -- males with athletic advantages over females. 10:50:34

16 Q Does it -- does it alone account for all or

17 any one of the measured advantages that men enjoy in

18 athletic performance?

19 MR. FRAMPTON: Objection; form.

20 THE WITNESS: I think I've answered your 10:50:57

21 question by stating it's a major factor, but not the

22 only factor.

23 BY MR. BLOCK:

24 Q Is -- are there any studies about the -- a

25 difference -- about the effect of a 10 percent 10:51:04

Page 87

1 difference in lean body mass on athletic performance?

2 A I'm going to say yes, I'm sure there's studies  
3 that are correlating lean body mass with performance.

4 Q But my question is a 10 percent difference in  
5 lean body mass. 10:51:26

6 MR. FRAMPTON: Objection; form.

7 THE WITNESS: Again, there are -- I -- I will  
8 say there are studies that are correlating percent lean  
9 body mass with athletic performance in all sorts of  
10 different events, and so that would include a 10:51:42  
11 10 percent difference, along with other differences,  
12 probably.

13 BY MR. BLOCK:

14 Q You -- you don't cite anything in your report  
15 that purports to study the effect of a -- a 10 percent 10:51:51  
16 difference in lean body mass in athletic performance,  
17 do you?

18 MR. FRAMPTON: Same objection.

19 THE WITNESS: Can you clarify what you're  
20 trying to ask me there? 10:52:05

21 BY MR. BLOCK:

22 Q In your report, do you cite any studies  
23 reflecting what affect a difference in -- I'll say that  
24 again, sorry.

25 Do you, in your report, cite any studies 10:52:21

1 measuring the effect of a 10 percent difference in lean  
2 body mass on athletic performance?

3 MR. FRAMPTON: Objection; form.

4 THE WITNESS: I don't recall citing any  
5 studies that specifically identify how much a 10:52:35  
6 10 percent advantage enhances performance.

7 BY MR. BLOCK:

8 Q Okay. Thank you.

9 Are you aware of any study proving that  
10 differences in athletic performance between prepubertal 10:53:01  
11 boys and girls are caused by biological factors and not  
12 social ones?

13 MR. FRAMPTON: Objection; form.

14 THE WITNESS: From a scientific standpoint,  
15 science does not prove. 10:53:19

16 BY MR. BLOCK:

17 Q Science does not prove what?

18 A Science doesn't prove anything from a  
19 scientific standpoint.

20 Q Well, do you have -- are there any articles 10:53:31  
21 that purport to exclude social factors as a cause of  
22 difference in performance between prepubertal boys and  
23 prepubertal girls?

24 A Yes. Eiberg.

25 Q How does that purport to exclude social 10:53:47

1 factors?

2 A So Eiberg measured six- to seven-year-old boys  
3 and girls, very objectively measured physical activity  
4 in those children, measured very objectively VO2 max in  
5 those children and body composition in those children 10:54:09  
6 and found that even for the children of the same amount  
7 of physical activity, boys have higher fitness.

8 Q And what -- what do you mean, even for  
9 children of the same physical activity?

10 A So boys and girls that engage in the same 10:54:24  
11 amount of physical activity -- running, jumping,  
12 whatever constitutes physical activity -- the boys had  
13 higher fitness.

14 Q So -- but does this mean physical activity in  
15 terms of what was measured, like for a particular 10:54:40  
16 event, or -- or physical activity in all aspects of  
17 their life?

18 A This was physical activity as measured by an  
19 accelerometer which measures the quantity and intensity  
20 of physical activity during the time period the 10:54:54  
21 accelerometer is worn.

22 Q Okay. So can you just explain to me how that  
23 can give you information about, you know, whether these  
24 boys and girls, as a general matter, like, were equally  
25 physically active, like, outside of the laboratory? 10:55:16

1           A     Sure.   So an accelerometer is a small device  
2     that is typically worn on your belt, usually on your  
3     right hip, aligned over your knee, and then that  
4     accelerometer, because of the scientific engineering --  
5     okay, I'll call it voodoo magic, but that's not really     10:55:37  
6     the right way to say it.   The way the accelerator  
7     works, it measures the movement of the body, and then  
8     it quantifies that movement as far as intensity.

9           And then after your study period, you have the  
10    person wear the accelerometer for the period of time     10:55:54  
11    you want, typically free living, you put it on the  
12    children and ask them to wear it for a week or two  
13    weeks or however long, then you come back, you connect  
14    the accelerometer to the computer, it downloads the  
15    information from the accelerometer, gives you what are     10:56:07  
16    known as counts.   And again, you can quantify those  
17    counts as sedentary, light, moderate or vigorous  
18    intensity physical activity.

19           So between the two, you get an amount of  
20    physical activity, an intensity of physical activity     10:56:22  
21    for the given time period of study.

22           Q     And so what -- what this study found is that  
23    people who were similarly -- like, just active during  
24    the period in which they were wearing this device, the  
25    boys were more physically fit than the girls?             10:56:45

1           A    Yes, for boys and girls with the same quantity  
2           of physical activity, same intensity, as equal as  
3           possible could be measured, the boys were more fit than  
4           the girls.

5           Q    And how was fitness measured? 10:57:02

6           A    Fitness was measured for body composition and  
7           VO2 max.

8           Q    Got it. Did the study measure any athletic  
9           performances?

10          A    This was not a study of competitive athletic 10:57:23  
11          performances.

12          Q    Got it. So it just -- it was about body  
13          composition, meaning like percentage of fat? Is that  
14          what you meant by "body composition"?

15          A    That would be a measure of how much of your 10:57:40  
16          body is fat, how much of your body is lean body mass.

17          Q    Got it. And -- and VO2 is the other thing  
18          measured?

19          A    So VO2 max is maximal aerobic capacity, which  
20          accounts for 30 to 40 percent of the performance in 10:57:55  
21          endurance-type activities.

22          Q    Okay. So if what's being measured is the  
23          percentage of lean body mass and we already know  
24          that -- that prepubertal boys, on average, would have  
25          10 percent more lean body mass than -- than girls, what 10:58:12

1 does the study add to that, in terms of translating  
2 that into an athletic advantage?

3 MR. FRAMPTON: Objection; form.

4 THE WITNESS: What the study is doing is  
5 quantifying and clarifying the differences between boys 10:58:29  
6 and girls that -- well, for the same amount of physical  
7 activity, boys have a higher VO2 max than girls.

8 Q Anything else besides the VO2 max?

9 MR. FRAMPTON: Objection; form.

10 THE WITNESS: And again, body composition, 10:58:51  
11 which, again, lean body mass is another determinant of  
12 potential for athletic performance and performance in  
13 sorts.

14 BY MR. BLOCK:

15 Q But -- but that's just confirming something 10:59:02  
16 that we already know, that -- that prebortal boys --  
17 prepubertal boys have, on average, 10 percent more lean  
18 body mass?

19 MR. FRAMPTON: Objection; form.

20 THE WITNESS: If I recall, the study also 10:59:17  
21 validated that for the same body composition, the boys  
22 had a higher VO2 max. I would need to refer to the  
23 study to verify if that was in there.

24 Q Okay. Anything else that -- that you think  
25 purports to exclude social causes as a difference in 10:59:41



1 measured athletic performance --

2 MR. HAMPTON: Objection; form.

3 BY MR. BLOCK:

4 Q -- between prepubertal boys and prepubertal

5 girls? 10:59:56

6 MR. FRAMPTON: Sorry, same objection.

7 Go ahead.

8 THE WITNESS: So again, those papers that I

9 cite showing the differences in body composition

10 between prepubertal boys and prepubertal girls because 11:00:03

11 lean body mass is a biological factor.

12 BY MR. BLOCK:

13 Q Right. But besides body composition, I'm

14 talking about athletic performance. And is there

15 anything else that purports exclude social causes for 11:00:17

16 differences in athletic performance as opposed to body

17 composition?

18 MR. FRAMPTON: Same objection.

19 THE WITNESS: To the best of my knowledge,

20 there are no studies quantifying the effects of social 11:00:30

21 causes on differences in athletic performance or

22 physiological factors of athletic performance between

23 boys and girls.

24 BY MR. BLOCK:

25 Q In preparation for your report, did you 11:00:41

1 conduct original research on the athletic performance  
2 of prepubertal boys and prepubertal girls?

3 A I have --

4 MR. FRAMPTON: Objection; form.

5 Go ahead. 11:00:59

6 THE WITNESS: I have downloaded, as stated in  
7 my report, data from Athletic.net, looking at the  
8 performance of seven-and eight-year-old children, of  
9 nine- and ten-year-old children, which are presumed to  
10 be prepubertal, and not just the numbers in the report, 11:01:14  
11 but other data, I have analyzed it statistically, and  
12 the boys outperform the girls in all of the track  
13 events that I analyzed.

14 BY MR. BLOCK:

15 Q Have you tried to have your analysis published 11:01:25  
16 anywhere?

17 A The analysis is being presented at UNK Student  
18 Research Day Thursday of next week. After  
19 presentation, the student author and I will probably  
20 explore publication opportunities. 11:01:39

21 BY MR. BLOCK:

22 Q All right. But you haven't so far?

23 A No, I have not submitted it for publication  
24 yet.

25 Q Okay. You've been writing on this topic in 11:01:46

1 the form of white papers and expert reports for over  
2 two years now; right?

3 A That is correct.

4 Q Have you ever attempted to submit any of your  
5 analysis for publication? 11:02:02

6 A I have not submitted these papers for  
7 publication.

8 Q But your -- have you ever, like, tried to  
9 submit your research on this topic in -- in general for  
10 publication? 11:02:18

11 MR. FRAMPTON: Objection; form.

12 THE WITNESS: So in general, do you mean  
13 differences between boys and girls?

14 BY MR. BLOCK:

15 Q I mean on the participation of transgender 11:02:27  
16 girls and women.

17 A So as stated in my declaration, I have the  
18 Physiology Educator (sic) Community of Practice blog  
19 post that I have written, that was reviewed prior to  
20 being published on the web, and I have the presentation 11:02:43  
21 I made at the American Physiological Society Sex and  
22 Gender conference.

23 Q Okay. Anything else?

24 A Those are the only two that I can remember  
25 that I have put out for public dissemination. 11:02:58

1 Q Okay. And were -- were either of those two  
2 examples peer reviewed?

3 A They were both peer reviewed.

4 Q Okay. Have you had -- well, we'll look at --  
5 we'll look at those in -- in a minute, but there's no 11:03:16  
6 other example of you attempting to submit work on this  
7 topic to a peer-reviewed publication?

8 A I have reached out to a journal editor about a  
9 possible letter to the editor, but the journal said  
10 they don't publish letters to the editor. 11:03:40

11 Q Okay. Why didn't you attempt to have your  
12 white paper, you know, published by a peer-reviewed  
13 journal?

14 A Well, quite honestly, because Emma Hilton,  
15 Tommy Lundberg, Joanna Harper and FIMS have all already 11:03:59  
16 published on this and have done a pretty good job  
17 reviewing the literature, so I'm not sure that another  
18 review of the literature is going to add to the  
19 scholarly knowledge.

20 Q What did the letter to the editor that you 11:04:12  
21 wanted to write say?

22 A I just asked the editor if they would accept a  
23 letter regarding the participation of trans women in  
24 women's sports.

25 Q What publications was that? 11:04:27

1 A I cannot remember if it was Medicine & Science  
2 in Sports & Exercise or the Journal of Strength and  
3 Conditioning Research.

4 Q Okay. And did you say what the letter would  
5 opine about? 11:04:43

6 A No.

7 MR. FRAMPTON: Objection; form.

8 THE WITNESS: Sorry.

9 I just asked if they would accept a letter on  
10 the topic. 11:04:52

11 BY MR. BLOCK:

12 Q Okay. Are you aware of any studies that  
13 specifically examine the athletic performance of  
14 prepubertal transgender girls?

15 MR. FRAMPTON: Objection; form. 11:05:07

16 THE WITNESS: I am not aware of any studies  
17 evaluating the performance of prepubertal biological  
18 gir- -- biological boys competing in girls' sports.

19 BY MR. BLOCK:

20 Q Okay. So let's -- we agreed before that if I 11:05:18  
21 say the term, you know, "trans girls," you understand  
22 what I'm saying; right?

23 A Yes. I just am speaking to make sure I'm  
24 clear to myself in what I'm saying.

25 Q Okay. So, you know, I -- I understand that 11:05:31

1     there's physical fitness data on -- on prepubertal boys  
2     versus prepubertal girls, and my question is, are you  
3     aware of any data that specifically breaks out  
4     prepubertal trans girls and reports on their  
5     performance?

11:05:53

6           A     I am not aware of any data analyzing trans  
7     girls.

8           Q     Okay. So are you aware of any data comparing  
9     the performance of prepubertal trans girls to  
10    prepubertal cis girls?

11:06:12

11          A     I am not aware of any research on that topic.

12          Q     Okay. If you could turn to page -- sorry --  
13    paragraph 114 of your report again.

14          A     Yes, paragraph 114, page 37.

15          Q     Okay. I have to pull it up, too.

11:06:38

16                All right. And it -- it continues from page  
17    37 to 38. You say (as read):

18                "While boys exhibit some performance  
19    advantages even before puberty, it is  
20    both true and" --

11:06:52

21                Sorry, my -- my PDF -- I'll read this again  
22    for the record. I apologize. (As read):

23                "While boys exhibit some performance  
24    advantages even before puberty, it is  
25    both true and well known to common

11:07:03

Page 99

1           experience that the male advantage  
2           increases rapidly, and becomes much  
3           larger, as boys undergo puberty and  
4           become men. Empirically, this can be  
5           seen by contrasting the modest 11:07:17  
6           advantages reviewed immediately above  
7           against the large performance  
8           advantages enjoyed by men that I have  
9           detailed in Section II."

10          Did I read that right? 11:07:26

11          A    It sure seemed like you read it word for word.

12          Q    All right. Thanks, I did my best.

13                So even though you contend that boys have a  
14   performance advantage before puberty, you believe those  
15   advantages are modest when compared with the large 11:07:41  
16   performance advantages resulting from puberty?

17               MR. FRAMPTON: Objection; form.

18               THE WITNESS: Yes, they are smaller than the  
19   advantages that occur after puberty.

20   BY MR. BLOCK: 11:07:55

21          Q    Okay. And -- and "modest" was your word;  
22   right?

23          A    Yes, "modest" was my word.

24          Q    Okay. And do you think it's unfair for  
25   prepubertal boys and girls in elementary school to -- 11:08:11

1 to play on coed or mixed teams?

2 MR. FRAMPTON: Objection; form, scope.

3 THE WITNESS: Before puberty, boys have  
4 athletic advantages compared to girls.

5 BY MR. BLOCK: 11:08:29

6 Q Do you think it's unfair for prepubertal boys  
7 and girls in elementary school to play on coed or mixed  
8 teams?

9 MR. FRAMPTON: Same objections.

10 THE WITNESS: I really haven't been retained 11:08:38  
11 as an expert witness to state fair or unfair in this  
12 matter as much as to provide the information and allow  
13 the policymakers to determine fair versus unfair.

14 BY MR. BLOCK:

15 Q Okay. So you're not, in your expert report, 11:08:50  
16 providing an opinion on whether it's fair for trans  
17 girls and women to compete on women's sports teams; is  
18 that right?

19 MR. FRAMPTON: Objection; form and scope.

20 Go ahead. 11:09:05

21 THE WITNESS: In my expert report, I have done  
22 my best to focus on the known biological differences  
23 between males and females, how those known biological  
24 differences gives male an athletic advantage and how  
25 that athletic advantage is not erased by a transgender 11:09:17



1 identity or the use of puberty blockers, gender --  
2 transgender hormones.

3 BY MR. BLOCK:

4 Q Okay. So you don't provide an expert opinion  
5 on whether the goals of fairness, safety and 11:09:30  
6 transgender inclusion are reconcilable?

7 MR. FRAMPTON: Objection; form.

8 THE WITNESS: If I recall correctly, I think I  
9 quote a source or two that state on that or perhaps  
10 paraphrase a source or two on what has been stated on 11:09:49  
11 that.

12 BY MR. BLOCK:

13 Q Okay. So -- so just to clarify the scope of  
14 the opinions you're offering, you are not presenting an  
15 expert opinion on whether it is fair or unfair for 11:09:57  
16 girls and women who are transgender to participate on  
17 girls and women's sports teams; correct?

18 MR. FRAMPTON: Objection; form.

19 THE WITNESS: I have tried to focus on the  
20 biological differences and how those differences 11:10:16  
21 provide male advantages and how those differences are  
22 not erased due to transgender identity or  
23 gender-affirming hormone therapy. I have tried to not  
24 give an opinion on fair versus unfair.

25 ///

1 BY MR. BLOCK:

2 Q Okay. And, you know, I apologize for being  
3 persnickety in the phrasing of the question, but I want  
4 to make sure that -- that -- that you're not answering  
5 about what you're focusing on. I want to know whether 11:10:45  
6 any evidence is going to be submitted in the form of an  
7 expert opinion by you regarding fairness of girls and  
8 women who are transgender participating in -- in girls  
9 and women's sports.

10 So I'm just going to ask it again, and I would 11:11:05  
11 just appreciate a "yes" or "no" answer, if you're  
12 capable of giving it.

13 Are you providing an expert opinion in this  
14 case regarding whether it is fair or unfair for girls  
15 and women who are transgender to compete on girls and 11:11:18  
16 women's sports teams?

17 MR. FRAMPTON: Objection; form, scope.

18 Go ahead.

19 THE WITNESS: I don't think I can answer that  
20 as a yes-or-no question because the information 11:11:30  
21 demonstrates that there's an advantage for biological  
22 males. And so then we come to a question of fair,  
23 which is a very challenging metaphysical question that  
24 I would prefer others address.

25 ///

1 BY MR. BLOCK:

2 Q So you -- you are not an expert on whether it  
3 is fair or unfair for girls and women who are  
4 transgender to participate on girls and women's sports  
5 teams?

11:12:01

6 MR. FRAMPTON: Objection; form.

7 THE WITNESS: I'm not a sports philosopher in  
8 whom that field would fall into.

9 BY MR. BLOCK:

10 Q Right. Therefore, you are not providing an  
11 expert opinion on whether it is fair or unfair for  
12 girls and women who are transgender to participate on  
13 girls and women's sports teams?

11:12:15

14 MR. FRAMPTON: Same objection.

15 THE WITNESS: As I've said, I've done my best  
16 to try and stick to the data and not give my opinion on  
17 what is fair or unfair.

11:12:25

18 BY MR. BLOCK:

19 Q I'm sorry, Dr. Brown, this -- this really  
20 should be like a -- a simple question. Because when  
21 you say "focus" and "I've tried to," that -- that's  
22 just not answering my question. I just really need a  
23 question (sic) on whether evidence is going to be  
24 submitted in this case, from you, in the form of an  
25 expert opinion under Federal Rules of Evidence 702 on

11:12:35

11:12:50

Page 104

1 whether or not it is fair or unfair for girls and women  
2 who are transgender to participate.

3           Regardless of whether it's your focus,  
4 regardless of whether you're trying -- what you're  
5 trying or not trying to do, I just need a "yes" or "no" 11:13:07  
6 answer on whether you are providing an expert opinion  
7 on the topic of fairness.

8           MR. FRAMPTON: Same objection.

9           THE WITNESS: So would you allow me a few  
10 minutes to review the conclusions to my declaration? 11:13:21  
11 Because I don't want to say something that is  
12 contradictory to what I have said in what is submitted  
13 as an expert declaration.

14           MR. BLOCK: All right. We can -- we can go  
15 off the record, if you would like to do that right now. 11:13:38

16           Does counsel want to go off the record?

17           MR. FRAMPTON: No, we don't need to go off the  
18 record. If he wants to review something, he can review  
19 it.

20           MR. BLOCK: Well, I'm not taking time out from 11:13:47  
21 the deposition for him to review what -- what his  
22 expert opinions are in -- in this case.

23           So, you know, if he wants to do it during a  
24 break, you know, you're welcome to, but you're not  
25 using my deposition time to answer a simple question. 11:14:00

1 I mean, this witness should know what he's  
2 providing an expert opinion on, so --

3 MR. FRAMPTON: And I think he's told you about  
4 three times now, but again, I don't need to argue that  
5 on the record. 11:14:13

6 BY MR. BLOCK:

7 Q But you know you're not providing an expert  
8 opinion on whether it's fair or unfair for prepubertal  
9 girls and boys in elementary school to play on coed or  
10 mixed sports teams? 11:14:28

11 A I think I've already answered that question  
12 with my statement about focusing on what the science is  
13 saying on who has advantages.

14 Q All right. Are you qualified to offer an  
15 expert opinion on fairness? 11:14:39

16 MR. FRAMPTON: Objection; form.

17 THE WITNESS: Who is a qualified expert to  
18 offer an opinion on fairness?

19 BY MR. BLOCK:

20 Q I don't know. Are you? 11:14:53

21 MR. FRAMPTON: Same objection.

22 Go ahead.

23 THE WITNESS: I think I can offer fairness as  
24 far as my understanding of what the policies and  
25 procedures are that are set to determine what is fair 11:15:08

1 in sports.

2 BY MR. BLOCK:

3 Q Your personal opinion; right?

4 MR. FRAMPTON: Same objection.

5 THE WITNESS: No. For instance, there are a 11:15:27

6 lot of policies that specify the -- that use of

7 performance-enhancing substances are unfair, in which

8 that is something that I would teach in my sports -- my

9 sport nutrition class. Since I'm teaching it in a

10 class, I've been judged by my peers to be an expert on 11:15:41

11 that.

12 BY MR. BLOCK:

13 Q Okay. But are you qualified to offer an

14 expert opinion on whether it's fair or unfair for girls

15 and women who are transgender to compete in women's 11:15:50

16 sports?

17 MR. FRAMPTON: Same objection.

18 THE WITNESS: Am I qualified? Well, the

19 policies state that it is not fair. And so if I am

20 following the policy, I suppose I am an expert in that. 11:16:02

21 BY MR. BLOCK:

22 Q I don't understand what that means.

23 A So when I teach in my classes, in my field, in

24 my expertise, quite often we discuss and teach about

25 the policies on what is fair participation or unfair 11:16:20

1 participation. Since I'm teaching it and I'm judged by  
2 my peers as an expert in it, then I would say I can  
3 give an expert opinion on it.

4 Q Who -- who are -- who -- who judges you as  
5 quali- -- what peers judge you as qualified to -- to 11:16:40  
6 give an expert opinion on whether it's fair for girls  
7 and women who are transgender to compete in girls and  
8 women's sports?

9 A Well, my -- again, I've been accepted by my  
10 peers as an expert to present on this topic, on the 11:16:59  
11 participation and the physiological effects of  
12 transgender individuals.

13 Q Right. My question was about fairness.

14 Have you been -- who, among your peers, have  
15 said that you are qualified to opine on the fairness of 11:17:16  
16 the participation of girls and women who are  
17 transgender in -- in girls and women's sports?

18 A My colleagues at the university I work at,  
19 administrators at the university I work at, they honor  
20 my opinion. 11:17:35

21 Q I thought that your opinion in this matter  
22 just reflects your own views, not the views of the  
23 university; is that right?

24 A That is correct.

25 Q Okay. So what do you mean by -- when you say 11:17:43

1 that the university honors your opinion?

2 A They allow me to express my opinion, and they  
3 recognize that it falls within my discipline and my  
4 field and the scope of my professional expertise.

5 Q How did they recognize that? 11:18:03

6 A They've told me.

7 Q Who has told you?

8 A The athletic director, the -- one of the  
9 senior vice chancellors, I can't remember her full  
10 title, another one of the vice chancellors for academic 11:18:24  
11 and student affairs.

12 Q Has any --

13 A Along -- along with some of my colleagues in  
14 the department.

15 Q Did the university tell you to testify in this 11:18:32  
16 case?

17 A The university did not tell me to or not to  
18 testify in this case.

19 Q Okay. Did any of the -- your -- your  
20 colleagues that honor your opinions, are any of them 11:18:43  
21 experts in fairness?

22 MR. FRAMPTON: Objection; form.

23 THE WITNESS: Well, one of them is a -- I  
24 guess his area would be sports sociology and sports  
25 psychology and does a lot of work in the area of 11:19:03



1 policies and procedures for sports, so I would say that  
2 he's probably an expert in fairness.

3 BY MR. BLOCK:

4 Q Have you been invited by any sort of  
5 professional policymaking organizations to participate 11:19:15  
6 in crafting policies?

7 A No, I have not.

8 Q Okay. Do you know whether West Virginia has  
9 any laws or policies regarding sex-separated sports for  
10 prepubertal children? 11:19:43

11 MR. FRAMPTON: Objection; form.

12 THE WITNESS: My understanding of the law that  
13 we're meeting about now does specify that you  
14 participate in sports based on biological sex.

15 BY MR. BLOCK: 11:19:57

16 Q Do you -- do you know whether West Virginia  
17 has any laws or policies regarding the participa- --  
18 let me say this again.

19 Do you know whether West Virginia has any laws  
20 or policies regarding sex-separated sports in 11:20:13  
21 elementary school?

22 MR. FRAMPTON: Objection; form.

23 THE WITNESS: If I recall correctly, this law  
24 applies to elementary school.

25 ///

1 BY MR. BLOCK:

2 Q Would your opinions in this case change if you  
3 were to learn that the law doesn't apply to elementary  
4 school?

5 MR. FRAMPTON: Objection to form. 11:20:36

6 THE WITNESS: No, my opinion would not change  
7 because there are biological differences between males  
8 and females that give males an inherent athletic  
9 advantage.

10 BY MR. BLOCK: 11:20:45

11 Q Do you think it's reasonable for a state to  
12 say that it wants sex-separated teams beginning in  
13 middle school, but not in elementary school?

14 MR. FRAMPTON: Objection; form.

15 THE WITNESS: I think it is reasonable since 11:21:06  
16 most of the time younger children's leagues are  
17 considered developmental and the children are not  
18 competing for prizes or honors. A lot of times that  
19 competition begins in middle or high school.

20 MR. BLOCK: Okay. That -- that's a great 11:21:24  
21 lead-in to the next exhibit. So if you would give me a  
22 second to make that happen.

23 (Exhibit 69 was marked for identification  
24 by the court reporter and is attached hereto.)

25 ///

1 BY MR. BLOCK:

2 Q All right. Soon appearing in your folder will  
3 be a document marked Exhibit 69. Let me know when  
4 that's available.

5 Do you see it? 11:22:09

6 A Exhibit 69, Briefing Book, WSPWG?

7 Q Yes. And you cite to this document in your  
8 report; right?

9 A Yes, I think I do.

10 Q Okay. Great. 11:22:21

11 If you could turn to footnote 2, I believe,  
12 footnote 2, page 8 of the document.

13 Can you let me know when you get to that?

14 A Footnote 2, page 8 starts off with the word  
15 "endocrinologists." 11:22:51

16 Q Yes.

17 A Yes.

18 Q Okay. If you look at what that footnote 2,  
19 like, refers to, in the third paragraph, beginning with  
20 "at the same time." 11:23:05

21 Do you see in the text "at the same time"?

22 A Sorry.

23 Q Yeah. Sure. The third paragraph from the top  
24 of the page begin- --

25 A Oh, sorry. Sorry. Yes, I've got it. 11:23:19

Page 112

1 Q Yeah. The second sentence of that paragraph,  
2 it says (as read):

3 "Because the onset of male puberty –  
4 normally around ages 11 - 12 in boys –  
5 is the physical justification for 11:23:30  
6 separate sex sport..."

7 And then that's what triggers the footnote 2;  
8 correct?

9 A Yes.

10 Q Okay. And then footnote 2 says (as read): 11:23:39

11 "Endocrinologists explain that puberty  
12 in boys should start between ages 9-13  
13 and in girls between ages 8-12; that  
14 puberty usually takes 4-5 years to  
15 complete so that 95% of boys will have 11:23:53  
16 started puberty by age 13. This  
17 timing is consistent with the formal  
18 position of the Women's Sports  
19 Foundation providing that '[p]rior to  
20 puberty, females and males should 11:24:05  
21 compete with and against each other on  
22 coeducational teams.'"

23 Did I read that correctly?

24 A Yes, you read that correctly.

25 Q Okay. And then it cites to a document from 11:24:21

1 the Women's Sports Foundation; correct?

2 A Yes.

3 Q Did you read that document?

4 A I cannot recall specifically if I've read that  
5 or not. I think I probably did, but I can't recall. 11:24:29

6 Q Okay. And so you understand that it's the  
7 position of the Women's Sports Foundation that prior to  
8 puberty, females and males should compete with and  
9 against each other on coeducational teams?

10 A Well, that is what is stated in this document. 11:24:51

11 Q Okay. Do you feel like you -- do you feel  
12 that you are qualified to offer an expert opinion on  
13 the fairness of elementary school kids participating on  
14 coeducational teams?

15 MR. FRAMPTON: Objection; form. 11:25:08

16 THE WITNESS: I think I can offer information  
17 on the differences in -- the -- the biological  
18 differences between boys and girls and how that gives  
19 boys an advantage in athletics.

20 BY MR. BLOCK: 11:25:23

21 Q Do you think the Women's Sports Foundation is  
22 a better source of information than you on what  
23 benefits prepubertal girls in athletic participation?

24 MR. FRAMPTON: Objection; form.

25 THE WITNESS: Can you rephrase that question? 11:25:40

1 BY MR. BLOCK:

2 Q Yeah, yeah.

3 Who -- who -- who do you think is a better  
4 source of authority on -- on -- on -- on what is in the  
5 best interest of prepubertal girls when it comes to 11:25:53  
6 athletics, you or the Women's Sports Foundation?

7 MR. FRAMPTON: Objection; form.

8 THE WITNESS: I think this may be a situation  
9 where I don't agree with the Women's Sports Foundation.

10 BY MR. BLOCK: 11:26:08

11 Q Okay. If you go back to -- to your report, on  
12 page 4, page 4 of your report. It's not in numbered  
13 paragraphs yet. And this is Exhibit 64, I believe.

14 A Okay. Page 4 where I have "Overview"?

15 Q Yes. 11:26:59

16 A All right.

17 Q In the first bullet point, you say (as read):  
18 "At the level of (a) elite, (b)  
19 collegiate, (c) scholastic, and (d)  
20 recreational competition, men, 11:27:10  
21 adolescent boys, or male children,  
22 have an advantage over equally aged,  
23 gifted, and trained women, adolescent  
24 girls, or female children in almost  
25 all athletic events." 11:27:19

Page 115

1 Is that right?

2 A That is correct.

3 Q Okay. So do you think that -- that  
4 prepubertal boys and prepubertal girls should not be  
5 playing in competition with each other in recreational 11:27:34  
6 events?

7 MR. FRAMPTON: Objection; form.

8 THE WITNESS: I think if they are competing  
9 for prizes, for awards, the boys have an advantage.

10 BY MR. BLOCK: 11:27:45

11 Q And, therefore, they should not be competing  
12 against each other for prizes and awards?

13 MR. FRAMPTON: Objection; form, scope.

14 THE WITNESS: I would say that if we are --  
15 yeah, the boys should not be competing against the 11:28:06  
16 girls if they're competing for prizes and awards.

17 BY MR. BLOCK:

18 Q Do you think that in the case of transgender  
19 girls and women after puberty, do you think they should  
20 not be allowed to play on recreational teams with 11:28:24  
21 cisgender girls and women?

22 MR. FRAMPTON: Objection; form, scope.

23 THE WITNESS: I have concerns about the safety  
24 of cisgender girls and women competing against  
25 biologically male -- sorry -- trans women. 11:28:45

1 BY MR. BLOCK:

2 Q Do you think that cisgender girls and women  
3 should be allowed to play on football teams with  
4 biological boys?

5 MR. FRAMPTON: Objection; form, scope. 11:29:00

6 THE WITNESS: If the girls are informed of the  
7 risks, then the girls should be able to make an  
8 informed choice on that matter.

9 BY MR. BLOCK:

10 Q So you don't think it's the -- the -- safety 11:29:13  
11 reasons should prohibit cisgender girls and women from  
12 playing football with cisgender boys?

13 MR. FRAMPTON: Same objection.

14 THE WITNESS: If the girls would like to play  
15 on the boys' team and they and their parents make an 11:29:28  
16 informed choice that they're willing to accept those  
17 risks, then I think that is up to them to choose.

18 BY MR. BLOCK:

19 Q Okay. And -- and do you think that cisgender  
20 girls and women should be allowed to play on wrestling 11:29:42  
21 teams with cisgender boys and men?

22 MR. FRAMPTON: Same objection.

23 THE WITNESS: I would say the same statement,  
24 if they are aware of the inherent risks and recognize  
25 the advantages that males have, they can make that 11:29:56

Page 117



1 choice.

2 BY MR. BLOCK:

3 Q Going back to recreational competition, do you  
4 think that transgender girls and women should not be  
5 allowed to play recreational sports on girls and 11:30:07  
6 women's teams if the sport is a noncontact or collision  
7 sport?

8 MR. FRAMPTON: Same objection.

9 THE WITNESS: If it is a women's league, then  
10 that should be limited to biological women. 11:30:25

11 BY MR. BLOCK:

12 Q Even if they're not competing for prizes?

13 MR. FRAMPTON: Same objection.

14 THE WITNESS: Can I walk through this for just  
15 a minute? 11:30:37

16 BY MR. BLOCK:

17 Q Sure.

18 A Oh. So if women are signing up for a women's  
19 recreational league, I think they do so with the  
20 expectation they will be playing -- and even if it's 11:30:47  
21 not competing for prizes, but they are competing --  
22 with other women. And so introducing a trans woman is  
23 not fair to the women that have said that they are  
24 competing against biological women.

25 Q Why isn't it fair if they're not competing for 11:31:04

1 prizes?

2 MR. FRAMPTON: Same objection.

3 THE WITNESS: Well, if they are competing --

4 even if it's not prizes, they are competing.

5 BY MR. BLOCK: 11:31:21

6 Q What if they're just -- just participating  
7 together for recreational purposes?

8 MR. FRAMPTON: Objection; form.

9 THE WITNESS: Then I think that the cisgender  
10 women still need to be fully informed of whether there 11:31:38  
11 will be trans women or not, and then they could make  
12 their choice on a recreational pickup game type of  
13 play.

14 BY MR. BLOCK:

15 Q Okay. If -- how about riflery, should 11:31:47  
16 transgender girls and women be allowed to play on a  
17 recreational riflery league with cisgender girls and  
18 women?

19 MR. FRAMPTON: Objection; form and scope.

20 THE WITNESS: Once again, if they are just out 11:32:14  
21 shooting for fun and they're not competing and the  
22 recognition is that it is not exclusively a women's  
23 event. All of those need to be considered.

24 BY MR. BLOCK:

25 Q Do you think transgender girls and women have 11:32:28

1 an athletic advantage over cisgender girls and women  
2 when it comes to riflery?

3 MR. FRAMPTON: Objection; form and scope.

4 THE WITNESS: Yes, I do think that transgender  
5 girls and women have an advantage over cisgender girls 11:32:41  
6 and women because you still have to hold the rifle, you  
7 still have to feel the recoil, and a larger individual  
8 will have less felt recoil.

9 BY MR. BLOCK:

10 Q So in terms of recreational activities, if a 11:33:16  
11 policy said that transgender girls and women can't  
12 compete in, you know, championship competition but can  
13 compete on recreational teams with cisgender girls and  
14 women and that policy is well known, is it your  
15 position that transgender girls and women should still, 11:33:43  
16 you know, not be allowed to compete on the -- to  
17 participate on those recreational teams with cisgender  
18 girls and women?

19 MR. FRAMPTON: Objection; form and scope.

20 THE WITNESS: It's kind of a long, complicated 11:33:57  
21 question. Can you simplify it for me?

22 BY MR. BLOCK:

23 Q Well, your -- your answer on recreational  
24 teams was that you want the cisgender people to be  
25 informed that a transgender person might be there. 11:34:12

1 So my question is, assuming that they're  
2 informed, do you still think that transgender girls and  
3 women should not be allowed to participate on  
4 recreational teams with cisgender girls and women?

5 MR. FRAMPTON: Objection; form, scope. 11:34:27

6 THE WITNESS: So if the governing policies for  
7 that recreational league indicate that transgender  
8 girls and women can compete there and if it doesn't  
9 violate some type of law that would regulate the  
10 funding for that recreational league and if the 11:34:36  
11 women -- if everyone is fully informed of who they will  
12 be playing with in this recreational league, then that  
13 would be okay for the trans women to participate in  
14 that league.

15 BY MR. BLOCK: 11:34:59

16 Q But you think that the cisgender girls and  
17 women would need to be specifically notified that there  
18 is an identifiable trans participant on the team as  
19 opposed to just knowing that as a matter of policy  
20 there might be one? 11:35:15

21 MR. FRAMPTON: Same objection.

22 THE WITNESS: My experience tells me that a  
23 lot of women would like to know that.

24 BY MR. BLOCK:

25 Q Why? 11:35:23

1 A Because --

2 MR. FRAMPTON: Same objection.

3 Go ahead.

4 THE WITNESS: Because they want to know who

5 they're competing against and because of our 11:35:29

6 longstanding policy of sex-segregated sports, they want

7 to know if they're playing on a coed team or a

8 sex-segregated team.

9 BY MR. BLOCK:

10 Q When you say your experience tells you that 11:35:42

11 women would like to know that, what experience?

12 A Talking with friends and family members,

13 students, colleagues, those types of things.

14 MR. BLOCK: So I -- I am going to another

15 section. I'm happy to continue going, unless you need 11:36:13

16 a -- a break.

17 THE WITNESS: I need a bathroom break.

18 MR. BLOCK: Sure. See you in five minutes.

19 THE WITNESS: All right. Thanks.

20 THE VIDEOGRAPHER: We are off the record at 11:36:24

21 11:36 a.m.

22 (Recess.)

23 THE VIDEOGRAPHER: We are on the record at

24 11:47 a.m.

25 MR. BLOCK: Great. 11:47:20

1 BY MR. BLOCK:

2 Q Dr. Brown, during the break, did you have a  
3 chance to review your expert report to determine  
4 whether you're offering an opinions on fairness?

5 MR. FRAMPTON: Objection; form. 11:47:30

6 THE WITNESS: I didn't take advantage of that  
7 time to look at that.

8 MR. BLOCK: Okay. I'm going to mark another  
9 exhibit here. So this -- this exhibit, which will  
10 appear shortly, is going to be marked as Exhibit 70. 11:47:58

11 (Exhibit 70 was marked for identification  
12 by the court reporter and is attached hereto.)

13 BY MR. BLOCK:

14 Q Please let me know when it's up on your  
15 screen. 11:48:05

16 A All right. Exhibit 70, 070 - 2021.

17 Q Yes. Can you tell me -- well, first of all,  
18 have you ever seen this document?

19 A You know, I can't promise that I have seen  
20 this document. 11:48:38

21 Q Okay. What does -- this is a document -- I've  
22 got to scroll back up to page 1 of this document  
23 myself.

24 This document is a transcript of hearings  
25 in -- in the Pennsylvania house of representatives on 11:48:56

Page 123

1 H.B. 972, Fairness in Women's Sports Act.

2 Is that -- do you agree that's what this  
3 document appears to be?

4 A Yes, that appears to be a transcript of a  
5 hearing on that. 11:49:14

6 Q Okay. And that hearing was on August 4th,  
7 2021; correct?

8 A That's what it says.

9 Q Okay. And do you remember providing testimony  
10 as part of this hearing? 11:49:24

11 A I do remember providing testimony for that.

12 Q Okay. Terrific.

13 If you can go to page 15.

14 A Sorry. It's loading slowly. As I scroll, I  
15 have to wait for the page to load. 11:49:54

16 Q Yeah. No, I -- I appreciate that.

17 A Okay. Page 15?

18 Q Yes.

19 A Starts off "Biological sex confers"?

20 Q Yeah. 11:50:03

21 A Okay.

22 Q "Biological" -- I'm just going to read it into  
23 the record. (As read):

24 "Biological sex confers inherent

25 athletic advantages to human males 11:50:09

Page 124

1 compared to human females such that  
2 even before puberty, males have  
3 10 percent more muscle mass, less body  
4 fat, larger hearts and lungs, denser  
5 bones, and other anatomical and 11:50:20  
6 physiological traits that give males  
7 inherent athletic advantages over  
8 comparably aged and trained females."

9 Did I read that right?

10 A Yes. 11:50:31

11 Q And do you recall giving that testimony?

12 A Yes.

13 Q Is it true that -- that prepubertal boys have  
14 denser bones than prepubertal girls?

15 A I would need to look back at my research 11:50:50  
16 that -- you know, the papers that I've read to see on  
17 that.

18 Q Okay. Is it -- is it true that prepubertal  
19 boys have larger hearts and lungs than prepubertal  
20 girls? 11:51:01

21 A They have larger lungs. And again, I would  
22 want to refer back to my research on the larger hearts.

23 Q Okay. Now, if you go to page 16.

24 A Okay.

25 Q Actually, go to page 17, line 3. 11:51:31



1           You say (as read):

2           "And a male to female individual will  
3           never experience nor need to learn how  
4           to cope with menstrual-cycle  
5           challenges, whereas 50 to 71 percent  
6           of female athletes expressed concerns  
7           that their menstrual cycle may  
8           influence their physical performance."

11:51:49

9           Did I read that right?

10          A    Yes, you did.

11:52:03

11          Q    So is it your testimony that one advantage  
12           that transgender girls and women have over cisgender  
13           girls is that they don't have to worry about their  
14           menstrual-cycle concerns?

15               MR. FRAMPTON:  Objection to the form and  
16           scope.

11:52:09

17               Go ahead.

18               THE WITNESS:  Yes, that is what I said in this  
19           situation in Philadelphia.

20          BY MR. BLOCK:

11:52:16

21          Q    Okay.  Do you --

22          A    Sorry, Harrisburg.

23          Q    Okay.  Are you offering that opinion in this  
24           case?

25          A    I did not include that opinion in my written

11:52:23

1 statement for this case.

2 Q Okay. Are you offering that opinions now in  
3 this case?

4 A I would offer that opinions now.

5 Q Okay. And -- so do you think that cisgender 11:52:33  
6 girls who are not menstruating have an advantage over  
7 cisgender girls who do menstruate?

8 MR. FRAMPTON: Objection; form, scope.

9 THE WITNESS: So the research regarding the  
10 effects of the menstrual cycle on athletic performance 11:52:53  
11 are very difficult and very confusing and some  
12 instances so -- show that phase of the menstrual cycle  
13 influence a performance, some do not.

14 But as I stated there, depending on which  
15 survey you're looking at, 50 to 71 percent of female 11:53:11  
16 athletes are concerned that their menstrual cycle will  
17 negatively impair their performance.

18 BY MR. BLOCK:

19 Q Okay. Do you think we should have separate  
20 teams for girls and women who menstruate and girls and 11:53:22  
21 women who don't?

22 MR. FRAMPTON: Same objection.

23 THE WITNESS: No, I do not.

24 BY MR. BLOCK:

25 Q Why not? 11:53:36

1 A Because they're all biologically female.

2 Q Even though some of them would have the  
3 advantage of not having to worry about their menstrual  
4 cycle; is that right?

5 MR. FRAMPTON: Same objection. 11:53:46

6 THE WITNESS: Again, what -- can you please  
7 rephrase that?

8 There were some questions -- some statements  
9 in there that were more absolute than I'm comfortable  
10 answering. 11:54:00

11 BY MR. BLOCK:

12 Q Okay. So despite the fact that cisgender  
13 girls and women who don't menstruate don't have to  
14 worry about how their menstrual cycle will affect  
15 athletic performance, you think that it's still fair 11:54:13  
16 for girls and women who menstruate to participate on  
17 the same sports teams as girls and women who don't  
18 menstruate; correct?

19 MR. FRAMPTON: Objection; form and scope.

20 THE WITNESS: So when you're talking about 11:54:30  
21 menstruate, I want to make sure we're on the same page  
22 here.

23 Do you mean they have lost having their  
24 menstrual cycle?

25 ///

1 BY MR. BLOCK:

2 Q I -- you know, I -- some -- that -- that could  
3 be one thing. Some -- some girls and women who are cis  
4 don't have a menstrual cycle.

5 So for whatever reason, a cisgender girl and 11:54:58  
6 women who do not menstruate, should they be playing on  
7 different teams from girls and women who do menstruate?

8 MR. FRAMPTON: Objection; form and scope.

9 THE WITNESS: So loss of the menstrual cycle  
10 is generally a negative connotation for a woman in 11:55:15  
11 terms of athletic performance. It would indicate  
12 somewhere progressing on the female athlete triad. And  
13 so they're still biological women. They should still  
14 be on the women's team.

15 BY MR. BLOCK: 11:55:39

16 Q So is it really relevant one way or another  
17 whether or not someone is menstruating to their  
18 athletic performance?

19 MR. FRAMPTON: Same objection.

20 THE WITNESS: Again, 50 to 71 percent of 11:55:47  
21 female athletes are concerned that their menstrual  
22 cycle will influence their physical athletic  
23 performance.

24 BY MR. BLOCK:

25 Q So is it relevant to their athletic 11:56:01

1 performance whether or not someone is menstruating?

2 MR. FRAMPTON: Same objection.

3 THE WITNESS: For some women, it is. For some  
4 women, it is not.

5 BY MR. BLOCK: 11:56:21

6 Q In your report, you refer, several times, to  
7 something called "puberty blockers"; right?

8 A Yes.

9 Q Okay. So I want to make sure that we're using  
10 the same terminology when we're using that phrase. 11:56:34

11 When I use the phrase "puberty blockers," I'm  
12 referring to gonadotropin-releasing hormone analogues.

13 Is that consistent with your understanding of  
14 the term "puberty blockers"?

15 A I know the gonadotropin-releasing hormone. I 11:56:53  
16 cannot remember if the word is "analogues" or  
17 "antagonists" or "agonists."

18 Q Okay. So GR- --

19 A GnR- -- yes.

20 Q I'm sorry, can you say that again? 11:57:06

21 A Yeah. G-N-R-H-As. And again --

22 Q So --

23 A -- I cannot remember specifically what the A  
24 stands for.

25 Q So -- so it's your understanding that the term 11:57:13

1 "hormone blockers" refers to GnRHa's; correct?

2 A Puberty blockers.

3 Q Sorry. Puberty blockers.

4 It's your understanding that the term "puberty

5 blocker" refers to the GnRHa's; correct?

11:57:27

6 A That is correct.

7 Q Okay. Great.

8 If we go to paragraph 110 of your report --

9 again, that's Exhibit 64. Let me know when you're --

10 when you get there.

11:57:39

11 A Paragraph 110 is what I'm headed for?

12 Q Yep.

13 A All right. Paragraph 110, page 36.

14 Q Great. So in paragraph 110, you say -- if you

15 go, like -- one, two, three, four -- five lines down,

11:58:18

16 after the parenthetical number 9, you say (as read):

17 "While it is outside my expertise, my

18 understanding is that current practice

19 with regard to administration of

20 puberty blockers is similar in the

11:58:33

21 United States."

22 I think you're referring to as in the UK; is

23 that correct?

24 A Yes.

25 Q Okay. And then you say (as read):

11:58:43

Page 131

1 "Tanner stages 2 and 3 generally

2 encompass" --

3 You say "an range," but I think you mean "a

4 range" -- sorry -- "a age range" -- no, I messed that

5 up. I'll say that again. I apologize for inserting an 11:59:00

6 error into your -- your sentence.

7 You say (as read):

8 "Tanner stages 2 and 3 generally

9 encompass an age range from 10 to 14

10 years old, with significant

11:59:07

11 differences between individuals."

12 And then you go on to say that you're not

13 aware of research directly addressing the implications

14 for athletic capability of the use of puberty blockers.

15 So, you know, my question is, when you wrote 11:59:24

16 that paragraph, did you think it -- did you consult the

17 Endocrine Society guidelines that we had previously

18 discussed?

19 MR. FRAMPTON: Objection to form.

20 THE WITNESS: I cannot recall if I 11:59:45

21 specifically looked at the Endocrine Society guidelines

22 as I was writing that. As I -- as I said, "as I

23 recall," I think, is the wording I used.

24 BY MR. BLOCK:

25 Q Okay. Did you make any effort to determine 11:59:57

1        what the -- the practice in the United States is with  
2        regard to administering puberty blockers?

3 MR. FRAMPTON: Objection; form.

4	Go ahead.
---	-----------

5 THE WITNESS: Well, there's the 12:00:13

6 Endocrine Society guidelines, but those are not  
7 specific to the United States, if I recall, and so I --  
8 BY MR. BLOCK:

9	Q	Right.
---	---	--------

10	A -- don't know of a specific United States	12:00:22
11	policy compared to the UK policy. I think it's more of	
12	a this is the policy.	

13 Q Yeah, got it.

14	But did you make any effort to determine what	
15	the practice is in the United States?	12:00:35

16 A I'm -- yes, I know I did look into it.

17	Q	How? How did you look into it?
----	---	--------------------------------

18           A    Reading scholarly literature on the topic to  
19    see what it says. Looking at web pages on the topic.

20 Q So -- so you read scholarly literature and web 12:00:57  
21 pages on the topic and you couldn't determine whether  
22 the practice in the United States is to administer  
23 puberty blockers at Tanner II versus Tanner III?

24 MR. FRAMPTON: Objection; form.

25 THE WITNESS: As I said there, my -- that is 12:01:16

Page 133



1 outside my scope of my expertise, and so I don't want  
2 to be construed as saying this is the policy. So I was  
3 trying to make sure that I was not giving specific  
4 medical advice on when someone should be administering  
5 puberty blockers.

12:01:32

6 BY MR. BLOCK:

7 Q If you submitted an article to a peer-reviewed  
8 journal and it included a sentence saying "while it is  
9 outside my expertise, my understanding is that," you  
10 know, and then the sentence continued, do you think  
11 that type of statement would be accepted in a  
12 peer-reviewed article?

12:01:48

13 A It would need to be taken in the context of  
14 the type of article. And some reviewers would find it  
15 acceptable because -- acknowledging what I don't know,  
16 and others would say perhaps not.

12:02:06

17 Q Do you think that your expert report in this  
18 case should be held to the same standards that a  
19 peer-reviewed article would be held to?

20 MR. FRAMPTON: Objection; form, scope.

12:02:21

21 THE WITNESS: No, this is not held in the same  
22 standards of a peer-reviewed article.

23 BY MR. BLOCK:

24 Q Why not?

25 A This is written for a different audience.

12:02:31

Page 134

1 Q So why -- why should it not be held to the  
2 same standards?

3 MR. FRAMPTON: Objection; form and scope.

4 THE WITNESS: Once again, this is written for  
5 a different audience. This is not written for the 12:02:48  
6 other experts in the field. This is written to provide  
7 information to policymakers and in a legal situation  
8 like this.

9 BY MR. BLOCK:

10 Q Well, but do you think that the -- regardless 12:02:58  
11 of the style in which something is written, do you  
12 think the same underlying rigor should be required for  
13 an expert report as a peer-reviewed article?

14 MR. FRAMPTON: Objection; form and scope.

15 THE WITNESS: No, an expert report is not 12:03:17  
16 going to be held to the same rigor as a peer-reviewed  
17 article.

18 BY MR. BLOCK:

19 Q Okay. So you -- do you think that the  
20 opinions expressed in an expert report don't have to be 12:03:27  
21 as reliable as the opinions expressed in a  
22 peer-reviewed article?

23 MR. FRAMPTON: Objection; form and scope.

24 THE WITNESS: The opinions in an expert report  
25 need to be accurate, they need to be correct. 12:03:43

1 BY MR. BLOCK:

2 Q Yeah, but that wasn't my question.

3 Can you answer my question, please?

4 A Can you restate my your question, please?

5 MR. BLOCK: Could the reporter read back my 12:03:50  
6 question?

7 THE REPORTER: Yes.

8 (Record read.)

9 MR. FRAMPTON: Objection; form and scope.

10 THE WITNESS: Generally, in a peer-reviewed 12:04:16  
11 article, you are not providing opinions; you are  
12 summarizing literature. And that's primarily what I've  
13 done here, is summarize literature.

14 BY MR. BLOCK:

15 Q Do you think the accuracy of the -- of your 12:04:26  
16 summaries in an expert report should be held to the  
17 same standard as the accuracy of summaries in a  
18 peer-reviewed article?

19 MR. FRAMPTON: Objection; form and scope.

20 THE WITNESS: The information needs to be 12:04:43  
21 correct, accurate, truthful.

22 MR. BLOCK: Can you read back my question,  
23 Reporter?

24 (Record read.)

25 MR. FRAMPTON: Objection; form and scope. 12:05:06

Page 136

1 THE WITNESS: I thought I answered that by  
2 saying it needs to be accurate and correct and  
3 truthful.

4 BY MR. BLOCK:

5 Q Can you answer the question? 12:05:13

6 I -- I asked -- give me a "yes" or "no"  
7 answer, please.

8 MR. FRAMPTON: Same objection.

9 THE WITNESS: I don't know that this is really  
10 a yes-or-no question. 12:05:25

11 BY MR. BLOCK:

12 Q Are there different standards of accuracy for  
13 an expert report than for a peer-reviewed article?

14 MR. FRAMPTON: Objection; form and scope.

15 THE WITNESS: They both need to be accurate 12:05:45  
16 and correct. The writing style is so phenomenally  
17 different.

18 BY MR. BLOCK:

19 Q All right. But they -- but the accuracy needs  
20 to be the same; correct? 12:05:58

21 MR. FRAMPTON: Same objection.

22 THE WITNESS: Yes, they need to be accurate  
23 and correct.

24 BY MR. BLOCK:

25 Q Okay. Is it fair to say that you did not 12:06:03

1 approach the task of writing this report with the same  
2 analytical rigor that you would have approached the  
3 task of writing a peer-reviewed article?

4 MR. FRAMPTON: Objection; form and scope.

5 THE WITNESS: That would not be a correct 12:06:16  
6 statement.

7 BY MR. BLOCK:

8 Q Okay. Would you be comfortable submitting the  
9 opinions that you expressed in this report in a  
10 peer-reviewed article? 12:06:26

11 A Yes, I would be comfortable submitting them in  
12 a peer-reviewed article.

13 Q Okay. If we could go back to your report, to  
14 paragraph 111. So your report is Exhibit 64.

15 A So paragraph 111 starts "Tack et al." 12:06:50

16 Q Yes, it does.

17 It says (as read):

18 "Tack et al. (2018) observed that in

19 21 transgender-identifying biological

20 males, administration of antiandrogens 12:07:02

21 for 5-31 months (commencing at 16.3 ±

22 1.21 years of age)" --

23 And then I think it says "age" again in  
24 parentheses. Or -- or is that just in my copy? I'm

25 sorry. I -- this is the second time I've -- I've 12:07:17

1 introduced an error into your words, so I will start  
2 that over again.

3 (As read):

4 "111. Tack et al. (2018) observed  
5 that in 21 transgender-identifying 12:07:31  
6 biological males, administration of  
7 antiandrogens for 5-31 months  
8 (commencing at  $16.3 \pm 1.21$  years of  
9 age) resulted in nearly, but not  
10 completely, halting of normal 12:07:45  
11 age-related increases in muscle  
12 strength."

13 Okay. Did I read that correctly?

14 A Yes, you did.

15 MR. BLOCK: All right. Sorry for the error 12:07:54  
16 the first time around.

17 So I'm going to introduce an exhibit now.

18 Okay. And so this exhibit, when it -- when it  
19 pops up in your folder, will be marked Exhibit 71.

20 (Exhibit 71 was marked for identification 12:08:26  
21 by the court reporter and is attached hereto.)

22 BY MR. BLOCK:

23 Q Can you please let me know when you see it.

24 A All right. Exhibit 71.

25 Q All right. Is that -- is this the Tack 12:08:41

1 article that you are referring to?

2 A Yes, it is.

3 Q Okay. Great.

4 So do you think this article is relevant to

5 the discussion about whether transgender girls who 12:08:53

6 receive puberty blockers have an athletic advantage

7 over cisgender girls?

8 A Yes, I think it is relevant.

9 Q Okay. Now, if you remember the conversation

10 we had a few minutes ago, we agreed that puberty 12:09:06

11 blockers referred to -- refers to GnRHa's; correct?

12 A That is correct.

13 Q Okay. Did any of the transgender girls in the

14 study receive GnRHa's?

15 A Not as I recall. 12:09:22

16 Q In fact, the transgender girls in the study

17 actually received a different type of hormone

18 medication called progestins; isn't that right?

19 A That is correct.

20 Q So this isn't actually a study about puberty 12:09:43

21 blockers, is it?

22 MR. FRAMPTON: Objection; form.

23 THE WITNESS: I never said this was a study

24 about puberty blockers.

25 ///

1 BY MR. BLOCK:

2 Q Why did you include this paragraph in a  
3 discussion about the effects of puberty blockers?

4 A Well, I clarified, in this paragraph, that  
5 they were using antiandrogens. Because as the authors 12:10:05  
6 have stated on page 2148 (as read):

7 This will contribute to determining  
8 the place of GnRHa and progestins,  
9 respectively, in the pharmacological  
10 treatment of trans youth and to 12:10:20  
11 improving our knowledge on the  
12 long-term effects of these  
13 interventions, as has been suggested  
14 recently.

15 And then they cite a source. 12:10:27

16 Q So in paragraph 110 of your report, you begin  
17 a discussion about the effects of puberty blockers on  
18 athletic performance; correct?

19 A Let me refer back to -- just to make sure  
20 we've got the right paragraph number there. 12:10:47

21 Paragraph 110. Yes, that paragraph does bring  
22 up the idea of puberty suppression and puberty  
23 blockers.

24 Q Okay. And then in paragraph 111, you discuss  
25 this article by Tack; correct? 12:11:22

Page 141



1 A That is correct.

2 Q And then in paragraph 112, you say (as read):

3 "Klaver et al. (2018 at 256)

4 demonstrated that the use of puberty

5 blockers did not eliminate the 12:11:37

6 differences in lean body mass between

7 biological male and female teenagers."

8 Correct?

9 A That is correct.

10 Q And then paragraph 113, again, begins with the 12:11:44

11 words "the effects of puberty blockers"; isn't that

12 right?

13 A That is correct.

14 Q Okay. So paragraph 110, 112 and 113 are all

15 discussing the effects of puberty blockers; correct? 12:11:55

16 A Yes.

17 Q And -- but paragraph 111, which is in between

18 110 and 112, is describing a study that does not

19 involve puberty blockers; correct?

20 MR. FRAMPTON: Objection; form. 12:12:15

21 THE WITNESS: That's correct.

22 BY MR. BLOCK:

23 Q Do you think that someone reading your report

24 could form the false impression that this article in

25 fact discusses puberty blockers when in reality it 12:12:24

1 doesn't?

2 MR. FRAMPTON: Objection; form.

3 THE WITNESS: If someone is reading it and  
4 pays attention to the statement of antiandrogens, they  
5 would know that those are not puberty blockers. 12:12:35

6 BY MR. BLOCK:

7 Q Do you -- I thought you said recently that  
8 this report is not meant for an audience of experts in  
9 the field; right?

10 MR. FRAMPTON: Objection; form. 12:12:46

11 THE WITNESS: That is correct.

12 BY MR. BLOCK:

13 Q Okay. So do you think a lay audience, not of  
14 experts in the field, would immediately understand that  
15 antiandrogens are different from puberty blockers in 12:12:58  
16 the context of this discussion?

17 MR. FRAMPTON: Objection; form.

18 THE WITNESS: So that's a difficult question  
19 for me to answer because as I read through it, I notice  
20 paragraph 110, puberty blockers, 112, -13, -14, all 12:13:13  
21 specifically state puberty blockers, 111 states  
22 antiandrogens. As I read that, as a critical thinker,  
23 I would then say, well, why does this say antiandrogens  
24 rather than puberty blockers and what -- learn the  
25 difference. 12:13:32

Page 143

1 BY MR. BLOCK:

2 Q So why does a paragraph in your report, in the  
3 middle of discussing puberty blockers, talk about  
4 antiandrogens at all?

5 A Because, to the best of my knowledge, that is 12:13:43  
6 the only research that is out there on the effects of  
7 transgender hormone treatment in teenagers on muscle  
8 strength.

9 Q I see. But wouldn't it be better to include  
10 that article in the subsequent sections of your report 12:14:01  
11 that discuss the effect of suppressing testosterone?

12 MR. FRAMPTON: Objection; form.

13 THE WITNESS: I think this is a matter of  
14 opinion. I think it fits well because this is focusing  
15 on transgender youth. 12:14:17

16 BY MR. BLOCK:

17 Q Oh, okay. So your -- your testimony is this  
18 section of the article is supposed to address the topic  
19 of transgender youth in general and not the topic of  
20 puberty suppression. Is that your testimony? 12:14:32

21 A No. My testimony is this is about transgender  
22 youth, including puberty suppression, and what we know  
23 on the topic of transgender youth and how it would  
24 affect athletic performance.

25 Q I see. Let's go to the beginning of this 12:14:49

1 section, which is several pages up. It's a long  
2 section. But the section begins on page 28 of your  
3 report. 23 on the bottom pagination, 28 of the PDF.  
4 And paragraph 68.

5 A All right. 12:15:28

6 Q Okay. So beginning with paragraph 68, you are  
7 discussing -- oh, sorry. I -- can we just go a little  
8 further down, to subsection A? I skipped over it  
9 myself. So this is actually paragraph 71.

10 A Okay. 12:15:55

11 Q Thank you.

12 So subsection A (as read):

13 "Boys exhibit advantages in athletic  
14 performance even before puberty."

15 Did I correctly read that that's the 12:16:04  
16 subsection?

17 A Yes, that is correct.

18 Q Okay. And then, you know, if you -- if you  
19 continue scrolling, you can take your time, it's a  
20 bunch of paragraphs on, you know, physiological 12:16:14  
21 characteristics before puberty, athletic performance  
22 before puberty; correct?

23 A Yes.

24 Q All right. And if you keep -- keep scrolling,  
25 I think all the way until we get to -- I -- I believe 12:16:31

Page 145

1 it's paragraph 110.

2 A Yes.

3 Q All right. So for all these paragraphs until  
4 110, you've been discussing characteristics of boys  
5 before puberty; correct?

12:16:53

6 A Yes. The athletic differences and  
7 physiological differences between biolo- -- between  
8 boys and girls before puberty.

9 Q Okay. And then in paragraph 110, you say (as  
10 read):

12:17:03

11 "For the most part, the data I review  
12 above relate to pre-pubertal children.

13 Today, we also face the question of  
14 inclusion in female athletics of males  
15 who have undergone 'puberty

12:17:13

16 suppression.'"

17 Isn't that right?

18 A Yes.

19 Q Okay. So what connects paragraph 110 to  
20 everything that came before it, as I understand it, is  
21 that it's supposed to provide information on athletic  
22 performance and advantages of what you call biological  
23 males who have not experienced endogenous, typically  
24 male, puberty yet; correct?

12:17:22

25 MR. FRAMPTON: Objection; form.

12:17:49

1 THE WITNESS: Yes, so if I understand what  
2 you're referring to there, there's a lot of paragraphs  
3 there about the differences between males and females  
4 before puberty.

5 BY MR. BLOCK: 12:18:02

6 Q Right. Okay.

7 And so -- and what thematically connects that  
8 to puberty blockers is that -- the argument is that  
9 girls who are transgender and on puberty blockers never  
10 experience, typically, male puberty; correct? 12:18:15

11 MR. FRAMPTON: Same objection. Objection to  
12 form.

13 THE WITNESS: Can you state that again,  
14 please?

15 BY MR. BLOCK: 12:18:25

16 Q Yeah. So transgender girls on hormone  
17 blockers never experience, typically, male puberty if  
18 they begin the blockers at stage Tanner II; is that  
19 right?

20 MR. FRAMPTON: Objection; form, scope. 12:18:39

21 THE WITNESS: That is my understanding.

22 BY MR. BLOCK:

23 Q Okay. And so that's thematically what  
24 connects the discussion of prepubertal kids to the  
25 discussion of trans girls on puberty blockers; correct? 12:18:52

1 MR. FRAMPTON: Objection; form.

2 THE WITNESS: So what you're saying is there's  
3 kind of a rough transition there?

4 BY MR. BLOCK:

5 Q Well, I -- I'm saying that -- I'm just asking 12:19:04  
6 why are they in the same subsection that discusses  
7 biological males before puberty?

8 A Well, because the puberty blockers would halt  
9 puberty. That is the purpose of them.

10 Q Exactly. So this then leads to my question of 12:19:24  
11 why do you then have a paragraph discussing  
12 antiandrogens administered, you know, near the end of  
13 puberty?

14 MR. FRAMPTON: Objection; form.

15 THE WITNESS: Because that is the only 12:19:42  
16 information we have on teenagers and how their gender  
17 treatment of hormones would be influenced.

18 If you look at some of those previous tables  
19 and the tables in the appendix that go along with that,  
20 they go up to 17-year-old children. 12:19:57

21 BY MR. BLOCK:

22 Q Right. But the -- the subsection is talking  
23 ability prepubertal children; right?

24 MR. FRAMPTON: Objection; form.

25 THE WITNESS: That is the primary focus of 12:20:06

1 that subjection, yes.

2 BY MR. BLOCK:

3 Q Okay. And the -- the teenagers discussed in  
4 the Tack study are not prepubertal teenagers; correct?

5 A That's correct. They are mid-prepubertal. 12:20:26

6 Q All right. Well, now let's look at  
7 paragraph 112 of your report which discusses a 2018  
8 study by Klaver.

9 Is that your understanding of how to pronounce  
10 the name Klaver? 12:20:41

11 A Yes, that is my understanding of how to  
12 pronounce the name. Thanks for asking.

13 MR. BLOCK: Okay. Great. And please feel  
14 free to correct me if I pronounce anyone else's name  
15 incorrectly. 12:20:54

16 All right. I'm going to introduce an exhibit.  
17 This exhibit, when it appears on your screen, is going  
18 to be marked as Exhibit 72.

19 (Exhibit 72 was marked for identification  
20 by the court reporter and is attached hereto.) 12:21:14

21 BY MR. BLOCK:

22 Q Please let me know when it's visible.

23 A Exhibit 072 - Klaver - Early Hormonal  
24 Treatment...

25 Q Right. And is this the article that you're 12:21:28



1 referring -- that you are referring to in  
2 paragraph 112?

3 A I think so. Without double-checking between  
4 my references cited, I -- I think this is the same  
5 article. 12:21:46

6 Q Okay. Is it your understanding that the  
7 people in this study received puberty blockers at the  
8 beginning of Tanner II?

9 A As I recall, they received puberty blockers,  
10 and I cannot recall the Tanner stage. I remember it 12:22:06  
11 giving the ages.

12 Q Okay. What -- what age?

13 A Average age of fourteen and a half, if I  
14 remember correctly.

15 Q Okay. And is fourteen and a half typically 12:22:15  
16 the beginning of Tanner stage II?

17 A Not typically.

18 Q Okay. So if you go to page 254 of the Klaver  
19 study --

20 A 2-5-4, yes. 12:22:37

21 Q All right. 2-5-4.

22 And if you look at the column that says  
23 "Transwomen," it says (as read):

24 "Age at start of GnRHa, 14.5 ± 1.8."

25 Is that right? 12:22:59

1 A Yes.

2 Q Okay. And so accord- -- so with those

3 figures, that means that the earliest that any of the

4 trans girls in the study received puberty blockers was

5 at age 12.7; correct?

12:23:14

6 A Do you want me to take the time to do the math

7 on that?

8 Q Well, 14.5 minus 1.8 is 12.7, but --

9 A So that's only one standard deviation. That

10 only accounts for, basically, a third of the

12:23:37

11 individuals below and above that age. So take out

12 another 1.8 to get two standard deviations away.

13 Q Got it.

14 A And you take they way that 1.8 again to

15 encompass the whole 99.99 percent.

12:23:50

16 Q Oh, okay. So what's your understanding of the

17 youngest age at which someone -- the girls in the study

18 receive puberty blockers, just -- if you can do it

19 or -- without --

20 A Just eyeball it. I'll say 10.7.

12:24:04

21 Q Okay. Thank you.

22 But the average age is 14.5; right?

23 A That is the average age, yes.

24 Q Okay. Great.

25 Now, you see in paragraph 112 of your report,

12:24:14

Page 151

1 which -- let me pull it up directly so I don't misread  
2 it again.

3 Paragraph 112 of your report, the first  
4 sentence you say (as read):

5 "Klaver et al. (2018 at 256) 12:24:29  
6 demonstrated that the use of puberty  
7 blockers did not eliminate the  
8 differences in lean body mass between  
9 biological male and female teenagers."

10 Did I read that right? 12:24:40

11 A I'm still getting to 112, sorry.

12 That -- that -- that sounds correct, but I'm  
13 not --

14 Q Right.

15 A -- there to verify. 12:24:49

16 All right. Now I'm at 112.

17 Q Okay. I'll read it again. (As read):

18 "Klaver et al. (2018 at 256)  
19 demonstrated that the use of puberty  
20 blockers did not eliminate the 12:25:03  
21 differences in lean body mass between  
22 biological male and female teenagers."

23 Did I read that sentence right?

24 A Yes.

25 Q Okay. And then it says (as read): 12:25:09

1 "Subsequent use of puberty blockers  
2 combined with cross-sex hormone use  
3 (in the same subjects) still did not  
4 eliminate the differences in lean body  
5 mass between biological male and 12:25:19  
6 female teenagers."

7 Is that right?

8 A Yes.

9 Q Okay. Great.

10 Did Klaver report any findings on percentage 12:25:26  
11 of body fat?

12 A Let me look.

13 Yes.

14 Q And -- and what were the findings on -- on  
15 body fat? 12:25:45

16 A Just looking at it to make sure I'm reading  
17 these correctly.

18 So it gives -- this is table -- or, sorry,  
19 figure 2. At the top of figure 2, there is percent  
20 body fat presented. 12:26:08

21 Q Yep. And the first part of that graph,  
22 page 256, table 2, shows the percent body fat of the  
23 trans women being virtually the same as the body fat of  
24 the cis women; correct?

25 A Sorry, how do you zoom on this Exhibit Share? 12:26:26

1           It's a tiny graph on my screen.

2           MS. DUPHILY: If you take your mouse on to the  
3 bottom and push, you should be able to see a plus and a  
4 minus to make it look bigger.

5           THE WITNESS: Okay. Ah, there we are. 12:26:47

6           All right. Sorry, it's taking me a minute to  
7 zoom in on that.

8           MR. BLOCK: Sure thing.

9           THE WITNESS: Okay. So to make sure we're  
10 looking at the same figure, the trans women are shown 12:27:05  
11 in the solid line, the trans men are shown in the light  
12 gray line, the cis men are shown in the dotted line,  
13 and the cis women are shown in the hash line; correct?

14 BY MR. BLOCK:

15           Q Correct. 12:27:19

16           A Okay. So the percent body fat in the trans  
17 women and the percent body fat in the cis women, the  
18 lines overlap at the part indicated as "Start CHT."

19           Q Okay. So that indicates that by the time the  
20 trans women in the study had begun CHT, their 12:27:42  
21 percentages of body fat overlapped with the percentages  
22 of body fat for cis women; right?

23           A That is correct.

24           Q Okay. And is body fat -- percentage of body  
25 fat a factor in athletic advantage? 12:28:01

1 A Yes, it is. Having excess body fat is  
2 considered a disadvantage.

3 Q Okay. So why didn't you mention this finding  
4 in your summary of the Klaver study?

5 A Because I mentioned the next part of the 12:28:16  
6 figure demonstrating that there was not elimination of  
7 the difference in lean body mass.

8 Q No, I understand that, but why did you just  
9 report on the lean body mass and not the body fat  
10 finding? 12:28:31

11 MR. FRAMPTON: Objection; form.

12 THE WITNESS: Because lean body mass is a more  
13 important determinant of athletic performance.

14 BY MR. BLOCK:

15 Q I see. Does your report ever say that lean 12:28:45  
16 body mass is a more important determinant?

17 MR. FRAMPTON: Objection; form.

18 THE WITNESS: I have stated multiple times in  
19 there that lean body mass is a determinant of athletic  
20 performance, and I've stated that -- and I have stated 12:29:02  
21 that excess body fat is a disadvantage.

22 BY MR. BLOCK:

23 Q Okay. But my question is, do you state that  
24 lean body mass is a more important determinant?

25 MR. FRAMPTON: Objection; form. 12:29:19

1 THE WITNESS: I don't recall where I specified  
2 which is more or least important in --

3 MR. BLOCK: Okay.

4 THE WITNESS: -- in regards to body  
5 composition. 12:29:23

6 BY MR. BLOCK:

7 Q Okay. You have a whole section in your report  
8 on the subject of body fat percentage; correct?

9 A Again, I would have to look to see if it's a  
10 whole section, if we're talking about a couple 12:29:38  
11 paragraphs, a couple of pages or whatnot, but, yes, I  
12 talk about body composition.

13 Q Okay. And you don't cite this study when you  
14 discuss body composition related to fat; correct?

15 A So I'm -- you're saying that I'm not citing 12:29:51  
16 Klaver in my previous discussions of body composition  
17 as a determinant of athletic performance?

18 Q In your discussion of the role of body fat in  
19 the -- as a determinant of athletic performance, you  
20 never cite to the findings of this Klaver article; 12:30:09  
21 correct?

22 A I -- I don't think so. I think these are the  
23 only paragraphs where I cite the Klaver articles, and  
24 we're talking specifically about with the puberty  
25 blockers. 12:30:23

1 Q I see. So -- but you -- you cite a finding of  
2 the Klaver article that you think is -- supports your  
3 view, but you don't cite a finding of the Klaver  
4 article that cuts against your view. Is that a fair  
5 statement?

12:30:41

6 MR. FRAMPTON: Objection; form.

7 THE WITNESS: Yes, I would say that it's fair  
8 to say that I don't cite Klaver on the differences in  
9 percent body fat.

10 BY MR. BLOCK:

12:30:55

11 Q Okay. So you testified earlier that you think  
12 that an expert report needs to be held to the same  
13 standards of accuracy as a peer-reviewed article;  
14 right?

15 A Yes, that is correct.

12:31:06

16 MR. FRAMPTON: Objection --

17 THE WITNESS: Oh, sorry.

18 BY MR. BLOCK:

19 Q So do -- do you think your -- your paragraph  
20 about Klaver is an accurate summary of the article in  
21 its entirety?

12:31:14

22 MR. FRAMPTON: Objection; form.

23 THE WITNESS: The paragraph is not intended to  
24 be a summary of the article in its entirety.

25 ///

Page 157



1 BY MR. BLOCK:

2 Q Okay. The paragraph is -- is just intended to  
3 pick out the portions of the article that support your  
4 argument; is that right?

5 MR. FRAMPTON: Objection; form. 12:31:33

6 THE WITNESS: The paragraph is intended to  
7 demonstrate that biological males retain athletic  
8 advantages.

9 BY MR. BLOCK:

10 Q Well, the -- the article doesn't say anything 12:31:44  
11 about athletic advantages; correct?

12 A I do not recall that the article uses the word  
13 "athletic advantages."

14 Q All right. If you go to -- if you look at  
15 page 255 of the Klaver article. So I think that's, 12:32:02  
16 like, one page before the -- the -- where we were  
17 looking.

18 A You're looking at table 2?

19 Q No. I'm -- I am just looking at the -- the --  
20 the text of it. 12:32:25

21 A Okay.

22 Q If you look at the first full sentence in the  
23 text that begins with "As a result."

24 A Okay.

25 Q Do you see that? 12:32:45

1 A Yes, I do.

2 Q All right. It says (as read):

3 "As a result of these changes, in  
4 young adult transwomen at age 22" --

5 Excuse me. (As read): 12:32:56

6 "As a result of these changes, in  
7 young adult transwomen at 22 years of  
8 age, SDS for WHR, body fat, and LBM  
9 showed greater similarity to ciswomen  
10 than to cismen." 12:33:08

11 Did I read that correctly?

12 A Yes, you read that correctly.

13 Q Okay. And do you mention that finding in your  
14 report?

15 A I do not think I quote that in my report. 12:33:17

16 Q Okay. All right.

17 MR. BLOCK: It's 1:30 -- can we go off the  
18 record?

19 THE WITNESS: Is that okay with you going off  
20 the record? 12:33:41

21 MS. DUPHILY: Kimberlee, are you there?

22 THE WITNESS: Nope.

23 MS. DUPHILY: We're going off the record at  
24 approximately 1:32 p.m. [Sic]

25 (Recess.) 12:38:29

1 THE VIDEOGRAPHER: We are on the record at

2 12:38 p.m.

3 MR. BLOCK: Okay. Great.

4 BY MR. BLOCK:

5 Q I'd like to move on from the topic of puberty 12:38:43

6 blockers and ask a few questions about trans women who

7 suppress circulating levels of testosterone after

8 puberty.

9 Can we turn to page 56 of your report?

10 A Come on. Waiting for it to load. 12:39:04

11 All right. So page 56 by the page numbers;

12 correct?

13 Q Correct.

14 A All right. I'm there.

15 Q Great. So if you go to the third bullet 12:39:27

16 point, you say (as read):

17 "The administration of androgen

18 inhibitors and cross-sex hormones to

19 men or adolescent boys after the onset

20 of male puberty does not eliminate the 12:39:40

21 performance advantage that men and

22 adolescent boys have over women and

23 adolescent girls in almost all

24 athletic events."

25 Did I read that right? 12:39:50

Page 160

1 A Yes, you did.

2 Q Okay. Great.

3 Have you read the expert reports that -- the  
4 expert reports that Dr. Safer submitted in this case?

5 A Yes, I read the reports by Dr. Safer. 12:40:00

6 Q All right. You read both the initial and the  
7 rebuttal reports?

8 A Yes.

9 Q Okay. Isn't it fair to say that the effects  
10 of male to female hormone treatment on important 12:40:10  
11 determinants of athletic performance still remain  
12 largely unknown?

13 MR. FRAMPTON: Object to form.

14 THE WITNESS: Sorry, I blanked out there for a  
15 second after the objection. 12:40:28

16 There are still a lot of questions. There are  
17 still a lot of questions.

18 MR. BLOCK: Okay. So I'd like to show you  
19 another exhibit. And we have to mark it as such.

20 All right. This is going to hopefully appear 12:41:08  
21 on your screen as Exhibit 73.

22 (Exhibit 73 was marked for identification  
23 by the court reporter and is attached hereto.)

24 BY MR. BLOCK:

25 Q Can you let me know when -- when you see it? 12:41:18

1 A All right. Exhibit 073 - Brown Blog Post.

2 Q Yes. Do you recognize what this document is?

3 A Yes.

4 Q What is it?

5 A That is my blog post for the Physiology 12:41:38

6 Educators Community of Practice about The Olympics,

7 sex, and gender in the physiology classroom.

8 Q Okay. What -- what is the Physi- --

9 Physiology Educators Community of Practice blog?

10 A So this is a blog sponsored by the American 12:41:58

11 Physiological Society and their -- specifically their

12 educators' interest group -- it probably has a

13 different name than that, but that's what it is -- just

14 sharing information for other teachers in physiology,

15 typically geared towards college-level educators. 12:42:16

16 Q And is there a submission process?

17 A Yes, there is.

18 Q What -- what is that submission process?

19 A Well, you have to contact the person that runs

20 the blog post and say you are interested. They connect 12:42:33

21 you, then, to the editor for Advances in Physiology

22 Education who then asks what you would like to blog on

23 and lets you know of available times, and then once you

24 agree on that, you'll submit it. And then, once again,

25 the editor reviews it, someone else associated also 12:42:55

1 reviews it prior to being put up on the web.

2 Q Okay. And so did you reach out with your  
3 interest in -- in submitting something?

4 A Yes, I did.

5 Q You weren't invited to submit something; 12:43:13  
6 correct?

7 A I did receive an in- -- an e-mail inviting to  
8 submit to the Peacock blog, and I e-mailed back and  
9 said, yes, I'm interested.

10 Q And did -- were you invited to submit 12:43:27  
11 something on the topic of transgender women  
12 participating in sports?

13 A The invitation was not specific on what I  
14 was -- would be blogging on.

15 Q And was it an invitation to you individually, 12:43:43  
16 or was it an invitation to a larger group?

17 A I think both, honestly. There is an  
18 invitation that goes out, periodically, to the larger  
19 group of published a paper in Advances in Physiology  
20 Education and received an invitation to me. 12:44:03

21 Q Okay. And so did this blog go through a  
22 revision process after you first submitted it?

23 A There was one round of revisions, if I  
24 remember correctly.

25 Q Okay. And do you remember what feedback you 12:44:23

1 got during the revision process?

2 A The feedback was very positive, and I was told  
3 that this is an extremely important topic that needs to  
4 be presented. And I really think the feedback was  
5 relevant to the -- the -- the graph that I had in there 12:44:41  
6 to ensure that I had appropriate copyright permission  
7 or whatever permission to have that reproduced.

8 Q Okay. Great.

9 This blog post doesn't discuss prepubertal  
10 children; right? 12:44:57

11 A Sorry, I'm just reviewing it to see.

12 I don't recall that it discusses prepubertal  
13 children.

14 Q And the blog also doesn't discuss trans girls  
15 and women who received puberty blockers and never went 12:45:25  
16 through endogenous puberty; right?

17 MR. FRAMPTON: Objection to the form.

18 THE WITNESS: I don't recall discussing that  
19 in there, and I'm not seeing it, as I look at the blog  
20 post. 12:45:43

21 BY MR. BLOCK:

22 Q Okay. So if you can just go to page 2, and if  
23 you go to the first full paragraph on page 2, beginning  
24 with the -- the second sentence, do you --

25 A Yes. 12:46:04

1 Q -- see that?

2 A Yes, I do.

3 Q Okay. So the second sentence there says (as  
4 read):

5 "It is also important to note that the 12:46:18  
6 effects of male-to-female hormone  
7 treatment on the important  
8 determinants of athletic performance  
9 remain largely unknown."

10 Did I read that right? 12:46:26

11 A Yes, you did.

12 Q Okay. Do you still agree with that statement?

13 A Yes, I still agree with that statement.

14 Q And so you think it's important to note that  
15 the effects remain largely unknown; correct? 12:46:36

16 MR. FRAMPTON: Objection; form.

17 THE WITNESS: Yes. Prior to allowing  
18 biological males to compete in female sports, we should  
19 have a better understanding of how that process would  
20 influence competition. 12:46:52

21 BY MR. BLOCK:

22 Q Okay. So in your expert report, do you ever  
23 note that the effects of male to female hormone  
24 treatment on important determinants of athletic  
25 performance advantage remain largely unknown? 12:47:05

Page 165



1           A    I could look and see, but I think I say --  
2           state something in my conclusion where there are still  
3           a lot of variables that have not been measured.

4           BY MR. BLOCK:

5           Q    Okay. In this paragraph that I was reading           12:47:20  
6           from, I'm just going to go into the next one. It says  
7           (as read):

8                   "Measurements of VO2max in transwomen  
9                   using direct or indirect calorimetry  
10                  are not available."                               12:47:35

11                  Did I read that right, even if I didn't  
12           pronounce it correctly?

13           A    Yes.

14           Q    Okay.

15           A    "Calorimetry" is how I say it because it kind       12:47:41  
16           of flows when you say it fast.

17           Q    Okay. That makes sense.

18                  Do you ever note in your expert report that  
19           measurements of VO2 max in trans women using direct or  
20           indirect calorimetry are not available?                   12:47:59

21           A    Once again, I would need to refer back to my  
22           report in the conclusions to see if I had included that  
23           in there.

24           Q    Do you think it would make sense to have  
25           included that in there?                                       12:48:16

1 MR. FRAMPTON: Objection; form.

2 THE WITNESS: Yes, I think it would make sense  
3 to include that in there, but it also -- like I said, I  
4 cannot recall if I did or did not.

5 BY MR. BLOCK: 12:48:33

6 Q Okay. Well, let's -- well, let's look at your  
7 report on -- so if you begin on page 39 of your report.

8 A All right.

9 Q All right. So this is -- Roman numeral V says  
10 (as read): 12:49:04

11 "The available evidence shows that  
12 suppression of testosterone in a male  
13 after puberty has occurred does not  
14 substantially eliminate the male  
15 athletic advantage." 12:49:14

16 Right? That -- that's what section Roman  
17 numeral V says; correct?

18 A That is correct.

19 Q Okay. And then subsection A on that page  
20 talks about (as read): 12:49:25

21 "Empirical studies find that males  
22 retain a strong performance advantage  
23 even after lengthy testosterone  
24 suppression."

25 Correct? 12:49:31

Page 167

1 A Correct.

2 Q All right. Then on 40, there's a subsection  
3 that says, "Hand Grip Strength."

4 A Okay.

5 Q Okay. And if you -- apologies. You know, 12:49:38  
6 I -- I should have directed you to page 46,  
7 subsection B of that. So if you can just skip ahead to  
8 46.

9 A Okay. Page 46.

10 Q Great. Thank you. 12:50:00

11 So subsection B says (as read):

12 "Testosterone suppression does not  
13 reverse important male physiological  
14 advantages."

15 Right? 12:50:09

16 A Yes.

17 Q Okay. And then if you turn the page, on 47,  
18 at the -- page 47, at the bottom, there's a little  
19 discussion on cardiovascular advantages; right?

20 A Yes. 12:50:20

21 Q All right. And where would VO2 -- where would  
22 the discussion of VO2 max go? Would that be in the  
23 "Cardiovascular Advantage" section or in a different  
24 subsection of this discussion?

25 MR. FRAMPTON: Object to the form. 12:50:40

1 THE WITNESS: It would probably belong in the  
2 cardiovascular advantages.

3 BY MR. BLOCK:

4 Q Okay. So do you see, just in this subsection,  
5 a discussion of the fact that measurements of VO2 max in 12:50:51  
6 trans women using direct or indirect calorimetry are  
7 not available?

8 A I have not directly made that statement.

9 Q Okay. And if -- toggling back over to -- to  
10 Exhibit 73, your blog post, after that statement I just 12:51:17  
11 read, you say (as read):

12 "Measurements of muscle strength in  
13 standard lifts (e.g. bench press, leg  
14 press, squat, deadlift, etc.) in  
15 transwomen are not available." 12:51:29

16 Is that correct?

17 A That is correct.

18 Q All right. Do you disclose that information  
19 in your expert report?

20 MR. FRAMPTON: Objection to the form. 12:51:39

21 THE WITNESS: In my expert report, I talk  
22 about the measurements of strength that have been  
23 conducted.

24 BY MR. BLOCK:

25 Q But you do not discuss the measurements of 12:51:52

1 strength that have not been conducted; correct?

2 MR. FRAMPTON: Objection to the form.

3 THE WITNESS: I'm scrolling up to see if I  
4 have some statement in there about, you know, specific  
5 measurements.

12:52:13

6 Here again, no, I do not specifically state  
7 that those measurements have not been conducted.

8 BY MR. BLOCK:

9 Q Okay. And then in the next sentence of the  
10 blog post, you say (as read):

12:52:27

11 "Nor have there been evaluations of  
12 the effects of male-to-female hormone  
13 therapy on agility, flexibility, or  
14 reaction time."

15 Is that right?

12:52:37

16 A That is correct.

17 Q Okay. And you do not, in your report, say  
18 anything about whether -- about the effects of hormone  
19 therapy on agility, flexibility or reaction time, do  
20 you?

12:52:55

21 MR. FRAMPTON: Objection to the form.

22 THE WITNESS: On page 39, I state that only a  
23 limited number of studies have directly measured the  
24 effect of testosterone suppression and the  
25 administration of female hormones on the athletic

12:53:05

Page 170

1 performance of males. And so then I go through those  
2 studies which, you know, by default, then says those  
3 other things have not been studied.

4 BY MR. BLOCK:

5 Q Okay. But you do discuss agility, flexibility 12:53:18  
6 and reaction time when you're discussing the advantages  
7 of cisgender men over cisgender women; right?

8 A Yes.

9 Q Okay. But then you don't have -- well, let me  
10 just read the next part of the -- the blog post. (As 12:53:39  
11 read):

12 "There has been no controlled research  
13 evaluating how male-to-female hormone  
14 treatment influences the adaptations  
15 to aerobic or resistance training." 12:53:50

16 Is that correct?

17 A That is correct.

18 Q And again, that's not something you mention in  
19 your report; correct?

20 MR. FRAMPTON: Objection to the form. 12:54:01

21 THE WITNESS: It is indirectly stated with my  
22 statement about limited number of studies.

23 BY MR. BLOCK:

24 Q Okay. And then the final sentence in that  
25 paragraph is (as read): 12:54:10

1 "And there are only anecdotal reports  
2 of the competitive athletic  
3 performance of transwomen before and  
4 after using male-to-female hormone  
5 treatment."

12:54:20

6 Is that right?

7 A That is correct.

8 Q Okay. So it's fair to say that when you  
9 discuss Cecé Telfer in your report, that's an example  
10 of one of the anecdotal reports you refer to in this  
11 sentence; correct?

12:54:31

12 A That's correct.

13 Q Okay. So the discussion of Cecé Telfer and  
14 Lia Thomas and Andraya Yearwood and Terry Miller, those  
15 are, to use your words from the blog post, quote, only  
16 anecdotal reports; correct?

12:54:56

17 MR. FRAMPTON: Objection to the form.

18 Go ahead.

19 THE WITNESS: If I may state, in my  
20 declaration, I do cite a prepublished study by  
21 Michael Joyner that is evaluating -- or, sorry,  
22 Senefeld and Joyner that is evaluating Lia Thomas.

12:55:12

23 But yes, those -- those would primarily be  
24 anecdotal reports.

25 ///

Page 172

1 BY MR. BLOCK:

2 Q Okay. If you go to the second sentence in the  
3 final paragraph, you say, (as read):

4 In the end, whether it is safe and  
5 fair to include transgender athletes 12:55:46  
6 and athletes with DSD in women's  
7 sports comes down to a -- to a few  
8 facts that can be extrapolated, lots  
9 of opinions, and an interesting but  
10 complicated discussion. 12:55:57  
11 Did I read that right?

12 A I'm sorry, where were you reading that from?

13 Q Yeah, it's the -- it's the second sentence in  
14 the last paragraph of your blog post.

15 A Okay. There. 12:56:12

16 Q Okay. I'll read it again. (As read):

17 In the end, whether it is safe and  
18 fair to include transgender athletes  
19 and athletes with DSD in women's  
20 sports comes down to a few facts that 12:56:21  
21 can be extrapolated, lots of opinions,  
22 and an interesting but complicated  
23 discussion.

24 Is that right?

25 A That is correct. 12:56:31



1 Q And you still agree with that statement?

2 A Yes.

3 Q Okay. What do you -- what do you mean by  
4 "interesting but complicated discussion"?

5 A Well, as I was writing this for fellow 12:56:43  
6 educators, this could be a very complicated discussion  
7 because of -- this could be a very heated topic.

8 Q Okay. So when you say that there -- "a few  
9 facts that can be extrapolated, lots of opinions, and  
10 an interesting but complicated discussion," were you 12:57:09  
11 referring at all to the underlying substance being  
12 interesting but complicated?

13 MR. FRAMPTON: Objection to the form.

14 THE WITNESS: Yeah, I'm not sure what you mean  
15 by "underlying substance." 12:57:25  
16 BY MR. BLOCK:

17 Q Yeah, is the discussion of whether -- aside  
18 from something being heated, is -- is the -- this topic  
19 complicated?

20 MR. FRAMPTON: Objection to the form. 12:57:40

21 THE WITNESS: Yes, this is a complicated  
22 topic.

23 BY MR. BLOCK:

24 Q Okay. So if we go to your report again --  
25 let's see -- on page 57 of your report. 12:57:57

Page 174

1 A All right. Page 57.

2 Q So if you look just at the paragraph beginning  
3 with the word "but."

4 A Okay. All right.

5 Q All right. You say -- you know, actually, 12:58:32  
6 instead, let's go a few sentences above that, so in the  
7 middle of the previous paragraph beginning with -- the  
8 sentence beginning with "instead."

9 Do you see that?

10 A I'm sorry, which -- 12:58:49

11 Q So this is about five -- five lines from the  
12 top.

13 A Okay. Yes. It says, "Instead, the IOC"?

14 Q Yeah. So this says --

15 A Okay. 12:58:58

16 Q -- (as read):

17 Instead, the IOC calls on other  
18 sporting bodies to define criteria for  
19 transgender inclusion, while demanding  
20 that such criteria simultaneously 12:59:05  
21 ensure fairness, safety, and inclusion  
22 for all. The recent -- recently  
23 updated NCAA policy on transgender  
24 participation also relies on other  
25 sporting bodies to establish criteria 12:59:19

Page 175

1 for transgender inclusion while  
2 calling for fair competition and  
3 safety.

4 But what we currently know tells us  
5 that these policy goals—fairness, 12:59:28  
6 safety, and full transgender  
7 inclusion—are irreconcilable for many  
8 or most sports.

9 Did I read those sentences correctly?

10 A Yes, you did. 12:59:40

11 Q Okay. How come -- why, in your blog post, did  
12 you not say that the goals of fairness, safety and full  
13 transgender inclusion are irreconcilable?

14 MR. FRAMPTON: Objection to the form.

15 THE WITNESS: The purpose of the blog post was 12:59:58  
16 to stimulate discussions in classroom while providing a  
17 little bit of guidance, but not advocate for a specific  
18 position within a classroom.

19 BY MR. BLOCK:

20 Q Why didn't you say in your expert report that 01:00:13  
21 whether it is safe and fair to include transgender  
22 athletes and athletes with DSD in women's sports comes  
23 down to a few facts that can be extrapolated, lots of  
24 opinions, in an interesting but complicated discuss?

25 MR. FRAMPTON: Objection to the form. 01:00:28

1 THE WITNESS: I think that a reasonable person  
2 would come to those conclusions after reading all --  
3 how many pages of my report?

4 BY MR. BLOCK:

5 Q Okay. So it's your expert testimony that 01:00:39  
6 whether it is safe and fair to include trans girls and  
7 women on girls and women's sports teams comes down to a  
8 few facts that can be extrapolated, lots of opinions  
9 and an interesting but complicated discussion?

10 MR. FRAMPTON: Object to the form. 01:01:01

11 THE WITNESS: Yes, I will stand by that  
12 statement in my blog post.

13 MR. BLOCK: Okay. Great.

14 So I'm going to now ask a few questions about  
15 your other, you know -- your other publication or 01:01:17  
16 submission on this topic. Let me just move it into the  
17 actual exhibits.

18 Let's see. So I -- this is a PowerPoint  
19 document. It's going to be marked as Exhibit 74, although  
20 I am not sure that it is actually going to work, 01:02:07  
21 showing up, so please let me know if it actually shows  
22 up for you.

23 (Exhibit 74 was marked for identification  
24 by the court reporter and is attached hereto.)

25 THE WITNESS: All right. I see Exhibit 074. 01:02:21

Page 177

1 MR. BLOCK: Okay. And I think we're going to  
2 need some assistance in how -- how do we zoom in again,  
3 Concierge?

4 MS. DUPHILY: You just hold your mouse over  
5 the bottom of the image, and you'll see the positive 01:02:37  
6 and negative-looking glasses at the bottom, and you  
7 can -- there's a menu.

8 Do you see that?

9 MR. BLOCK: Mouse over the image?

10 MS. DUPHILY: You want to click on it when 01:02:54  
11 you're --

12 MR. BLOCK: All right.

13 MS. DUPHILY: Did you do it?

14 MR. FRAMPTON: With the witness, we're not  
15 getting that. 01:03:03

16 MS. DUPHILY: Hold on a minute. Let me see.

17 MR. TRYON: Yeah, this is Dave Tryon. I've  
18 seen that on other exhibits, but this one, it's not  
19 showing up for me.

20 MR. BLOCK: If you're able to download a 01:03:19  
21 copy --

22 MS. DUPHILY: Yeah, you're probably better off  
23 downloading this because it's a PowerPoint.

24 BY MR. BLOCK:

25 Q Have you been able to download it, Dr. Brown? 01:04:02

1                   A     It appears that my computer is trying to  
2     update PowerPoint at this very moment.

3	Q	Okay.
---	---	-------

4 MR. BLOCK: So why don't we -- can we go off  
5 the record, please?

01:04:12

6 MR. FRAMPTON: It looks like it's nearly --

7 THE VIDEOGRAPHER: We are off the record at  
8 1:04 p.m.

9	(Recess.)
---	-----------

10	THE VIDEOGRAPHER: We are on the record at	01:05:37
11	1:05 p.m.	

12 MR. BLOCK: Thanks.

13 BY MR. BLOCK:

14 Q So is this a presentation that you authored,  
15 Dr. Brown?

01:05:51

16	A Yes, it is.
----	---------------

17 Q And the title of this presentation is  
18 "Transwomen Competing in Women's Sports: What We Know,  
19 and What We Don't"; is that right?

20	A That is correct.	01:06:01
----	--------------------	----------

21 Q Okay. And what conference did you submit this  
22 presentation to?

23           A     This was the American Physiological Society  
24     Sex and Gender conference, if I remember the title  
25     correctly.

01:06:18

Page 179

1 Q Yeah. If I -- if I said it was called "The  
2 New Trends in Sex and Gender Medicine" conference, does  
3 that sound accurate to you?

4 A Yes.

5 Q Okay. And am I right that the conference took 01:06:28  
6 place from October 19th to October 22nd?

7 A That sounds correct.

8 Q Okay. Did you attend any meetings or panel  
9 discussions as part of this conference?

10 A So this was a virtual conference for everyone. 01:06:42

11 Q Uh-huh.

12 A And so, yes, I sat in on discussions and panel  
13 discussions and presentations and such.

14 Q Okay. Did you sit in on the panel discussion  
15 at this conference titled "New Trends in Transgender 01:07:05  
16 Medicine"?

17 A I honestly can't remember if I sat in and  
18 attended that or not.

19 Q Okay. You have no recollection one way or the  
20 other? 01:07:18

21 A Yeah, I -- there was a lot of meetings, a lot  
22 of presentations and a lot of discussions, so I can't  
23 say exactly which ones I was in and which ones I was  
24 not.

25 Q Do you think it would have been informative to 01:07:32

1 attend that presentation?

2 A Yes.

3 MR. FRAMPTON: Objection to the form.

4 THE WITNESS: Sorry.

5 MR. FRAMPTON: Go ahead. 01:07:39

6 BY MR. BLOCK:

7 Q You can answer.

8 A Yes, it -- it would have been informative.

9 Q Okay. And do you think it would have been at  
10 least as relevant to your research as Ben Shapiro? 01:07:49

11 MR. FRAMPTON: Object to the form.

12 THE WITNESS: It's possible that I had a  
13 conflicting obligation that made it so I'm not able to  
14 attend. Again, I know that I did with all of them, I  
15 wasn't able to attend every single session I wanted 01:08:04  
16 because of other obligations.

17 BY MR. BLOCK:

18 Q I see. But -- but my question is, would -- it  
19 would be a more reliable source of information than  
20 Ben Shapiro, was my question. 01:08:19

21 MR. FRAMPTON: Object to the form.

22 THE WITNESS: I guess that would depend on  
23 what we're asking, Ben Shapiro is -- is speaking about  
24 and where he is citing his sources versus what is being  
25 discussed in that discussion. 01:08:37

Page 181



1 BY MR. BLOCK:

2 Q Okay. Now, would -- would this  
3 presentation quali- -- would -- could this be  
4 prescribed as a poster presentation?

5 A Yes. 01:08:51

6 Q Okay. Does your CV identify it as a poster  
7 presentation?

8 A I don't think my CV discriminates on my  
9 various academic presentations, as to what format they  
10 were presented in. 01:09:06

11 Q Okay. So it's not your regular practice to  
12 denote whether a presentation is specifically a poster  
13 presentation?

14 A That is correct.

15 Q Okay. All right. What was the review process 01:09:13  
16 for submitting this?

17 A So I -- I was encouraged by an editor from the  
18 American Journal of Physiology to submit to this, after  
19 having read my blog post. I submitted it, paid the  
20 abstract submission fee, like any other professional 01:09:34  
21 conference, and awaited for acceptance of the abstract.

22 Q And what -- were there edits to the abstract  
23 sent back to you?

24 A No. They don't edit the abstracts.

25 Q Okay. All right. 01:09:47

1           If you go to the bottom right-hand corner of  
2       this presentation, there's a box titled "What we don't  
3       know"; right?

4           A     Correct.

5           Q     Okay. And then -- and this box says, "What We     01:10:09  
6       Don't Know," and then the first bullet is "No  
7       controlled training studies with male-to-female hormone  
8       use"; correct?

9           A     Correct.

10          Q     Okay. And -- and again, as we discussed         01:10:20  
11       before, that -- that statement is not in your expert  
12       report; right?

13          MR. FRAMPTON: Object to the form.

14          THE WITNESS: That statement is not verbatim  
15       in my expert report.                                     01:10:36  
16       BY MR. BLOCK:

17          Q     And then the second bullet point is "No  
18       measurements of changes in VO2max, running economy,  
19       lactate threshold, anaerobic power (e.g. Wingate test),  
20       vertical jump, 1-Repetition Maximum (e.g. bench press,     01:10:47  
21       leg press, squat, deadlift), or many other common  
22       determinants of athletic performance"; correct?

23          A     That is correct.

24          Q     And that information in that bullet point is  
25       not included in your expert report; correct?             01:11:05

1 MR. FRAMPTON: Object to the form.

2 THE WITNESS: Again, in my expert report, I  
3 state that there is limited evaluation. I don't make  
4 that statement exactly.

5 BY MR. BLOCK: 01:11:17

6 Q Okay. How come this poster presentation  
7 doesn't say that the policy goals of fairness, safety  
8 and full transgender inclusion are irreconcilable for  
9 many or most sports?

10 MR. FRAMPTON: Object to the form. 01:11:28

11 THE WITNESS: This poster was put together and  
12 presented before the recent IOC or NCAA adjustments,  
13 stating that that was a requirement. And again, the  
14 poster is summarizing the science of what we know and  
15 what we do not know. 01:11:48

16 BY MR. BLOCK:

17 Q So would you feel comfortable making the  
18 statement to a -- a peer-reviewed publication that the  
19 policy goals of fairness, safety and full transgender  
20 inclusion are irreconcilable? 01:12:05

21 A Yes, I would feel very comfortable saying that  
22 in a peer-reviewed pol- -- publication or presentation.

23 Q Can you tell me your understanding of what  
24 this case is about?

25 MR. FRAMPTON: Object to the form. 01:12:31

Page 184

1 Go ahead.

2 THE WITNESS: So the State of West Virginia,  
3 like about currently 11 other states, if I recall,  
4 passed a law to limit participation in women's sports  
5 to biological women. 01:12:43

6 In this case, a young trans girl has retained  
7 some lawyers and filed a lawsuit asking to be able to  
8 participate in girls sports.

9 The judge has given an injunction specifically  
10 for the plaintiff, but not halting the law overall. 01:13:05

11 BY MR. BLOCK:

12 Q And do you -- so the -- the plaintiff's name  
13 is -- is Becky.

14 Do you oppo- -- do you think Becky should not  
15 be allowed to participate on her middle school 01:13:23  
16 cross-country team?

17 MR. FRAMPTON: Object to the form and scope.

18 THE WITNESS: So my understanding is the  
19 plaintiff is biologically male, so a trans girl, who  
20 wants to compete on girls sports. 01:13:39

21 BY MR. BLOCK:

22 Q Yes. And -- and so what's the answer to my  
23 question?

24 A So --

25 MR. FRAMPTON: Same objections. 01:13:54

Page 185

1 THE WITNESS: So if we were to follow the law,  
2 then the plaintiff should not be participating in  
3 girls' sports.

4 BY MR. BLOCK:

5 Q Yeah, but it's your -- is it your expert 01:14:01  
6 opinions that Becky should not be participating in the  
7 girls' cross-country team at her middle school?

8 MR. FRAMPTON: Objection; form and scope.

9 THE WITNESS: So my expert statement, expert  
10 declaration, is not meant to make judgments on an 01:14:17  
11 individual basis, but overall policy and law.

12 BY MR. BLOCK:

13 Q Okay. Well, so you -- you made a distinction  
14 between the fact that the injunction is -- applies only  
15 to Becky and not to the -- the statute on its face, and 01:14:31  
16 so I'm just trying to figure out whether your expert  
17 opinion is only about other applications of the statute  
18 to people beyond Becky or whether you are also offering  
19 expert testimony with respect to the specific issue of  
20 Becky's as-applied challenge. 01:14:51

21 MR. FRAMPTON: Objection; form and scope.

22 THE WITNESS: I've not made any statements  
23 that I'm aware of specific to an individual plaintiff  
24 in this case or -- I don't think in any of the cases.

25 ///

1 BY MR. BLOCK:

2 Q Okay. So you're not offering an expert  
3 opinions in this case with regard to whether Becky, as  
4 an individual, should be allowed to participate on her  
5 girl's cross-country team in middle school? 01:15:22

6 MR. FRAMPTON: Objection; form and scope.

7 THE WITNESS: I'm offering an expert opinion  
8 based on what the science says and what we know overall  
9 regarding differences between males and females and how  
10 those differences are affected by transgender hormone 01:15:37  
11 use.

12 BY MR. BLOCK:

13 Q Okay. And are you offering any opinion on  
14 whether Becky, as an individual, has any athletic  
15 advantages compared to cisgender girls? 01:15:52

16 MR. FRAMPTON: Objection; form and scope.

17 THE WITNESS: I'm not making statements  
18 specific to Becky. I am talking about boys and girls  
19 overall.

20 BY MR. BLOCK: 01:16:07

21 Q Okay. And it's possible that Becky, as an  
22 individual, as opposed to people with a male sex  
23 assigned at birth overall -- let me just rephrase that.

24 It's possible that Becky, as an individual,  
25 may not have any athletic advantages compared with 01:16:21

Page 187

1 cisgender girls; right?

2 MR. FRAMPTON: Object to the form and scope.

3 THE WITNESS: Based on the information I have  
4 read, the information cited in my expert report, if we  
5 are comparing the plaintiff to a similarly aged trained 01:16:34  
6 and gifted girl, the plaintiff, as a biological male,  
7 will have athletic advantages.

8 BY MR. BLOCK:

9 Q Well, that -- that raises questions for me.

10 I -- I -- I guess my understanding of your 01:16:49  
11 report was that you were discussing average group-based  
12 differences between males and females; right?

13 A If you look at my --

14 MR. FRAMPTON: Objection; form.

15 Go ahead. 01:17:01

16 THE WITNESS: If you look at my report, I -- I  
17 provide information on individuals in the 10th  
18 percentile, individuals in the 50th percentile,  
19 individuals in the 90th percentile, and state multiple  
20 times if we compare equally trained, gifted and 01:17:14  
21 talented same-age individuals, the males have an  
22 advantage.

23 BY MR. BLOCK:

24 Q Well, what do you mean by "gifted"?

25 A There are many gifts that could help a person 01:17:25

1 be a better athlete than others, whether --

2 Q So --

3 A -- whether it is something biological, whether  
4 that is something with family support.

5 Q Okay. But -- so when -- when you're 01:17:43

6 discussing the physiological characteristics that, on  
7 average, make cisgender boys have better outcomes in  
8 athletic performance than cisgender girls, you're not  
9 saying that every single cisgender boy has

10 physiological characteristics that make -- that give 01:18:03  
11 them an advantage over the average cisgender girl of  
12 the same age and training, are you?

13 MR. FRAMPTON: Object to the form.

14 THE WITNESS: When we look at the data, if you  
15 compare comparably gifted aged and trained males and 01:18:24  
16 females, the males have an advantage.

17 BY MR. BLOCK:

18 Q Yeah, but you're -- you're smuggling in the  
19 word "gifted" here, and you're including these  
20 physiological characteristics as meaning gifted, it 01:18:34  
21 sounds like.

22 I'm trying to isolate your testimony about  
23 physiological advantages, okay?

24 And so it's possible there's -- there's plenty  
25 of boys that are shorter than girls; right? 01:18:46



1 A Yes, there are some boys that are shorter than  
2 some girls.

3 Q Yes. So not -- not every -- and there are  
4 some boys that are shorter than the average girl of the  
5 same age; correct? 01:19:04

6 A Yes, there are some boys that are shorter than  
7 the average girl.

8 Q Okay. So not -- not every -- so even if  
9 males, on average, are taller than females, on average,  
10 not every male is gifted with greater height than the 01:19:18  
11 average girl of the same age; right?

12 A 50 percent of men are taller than 90 percent  
13 of women.

14 Q Yeah. And I know you're -- you're -- you're  
15 making a statement, though, that that doesn't answer my 01:19:38  
16 question. And so I'm taking that as -- is the answer  
17 to my question "correct"?

18 A Could you restate the question, please?

19 Q Yes. Not every boy is taller than the average  
20 cisgender woman; right? 01:19:54

21 Let me switch from boys to gir- -- to a woman.

22 Not every cisgender boy is taller than the  
23 average cisgender girl of the same age; correct?

24 A If I can -- I'm -- I'm just a little confused  
25 here because you are comparing an absolute of every boy 01:20:13

1 with average.

2 Q Yes, I -- I -- I am. I -- I'm saying that it  
3 is entirely possible that there's an individual that is  
4 not taller than the -- an individual who is a boy that  
5 is not taller than the average girl, the mean -- or the 01:20:31  
6 mean height of girls of the same age; right?

7 A Yes. So if you look at the distribution  
8 curves for body height, boys on the shorter end of the  
9 distribution curve may be shorter than girls in the  
10 average of the distribution curve. 01:20:47

11 Q And -- and the same is true for speed; right?

12 A If I may, I would actually like to refer back  
13 to the graphs by Gabe Higgard so we could look and see  
14 where the slowest boys are relative to the  
15 50th percentile for the girls in those competitions. 01:21:09

16 Q Okay. We can -- so we -- I appreciate that.  
17 We can refer back to that later.

18 Are -- are you familiar at all with Becky's  
19 athletic performance?

20 A No. I know nothing of Becky's athletic 01:21:26  
21 performance.

22 Q Okay. And you -- as we said before, you are  
23 not providing expert testimony about her as an  
24 individual; correct?

25 A Right. I'm providing testimony on overall 01:21:41

1       what we would see if we compare equal, as much as  
2       possible, males to females.

3           Q     And is it your understanding of -- of this law  
4       that it prevents girls who are transgender from  
5       participating on the same sports teams as cisgender       01:22:06  
6       girls?

7           MR. FRAMPTON:   Object to the form and scope.

8           THE WITNESS:   My understanding is, yes, this  
9       states that people should participate in sports  
10      based -- based on their biological sex.               01:22:21

11      BY MR. BLOCK:

12          Q     Right.   And, therefore, transgender girls  
13      should not be allowed to participate on the same sports  
14      team as cisgender girls; correct?

15          MR. FRAMPTON:   Same objection.               01:22:32

16          THE WITNESS:   Just going to rephrase that.

17          So trans girls should not be competing with  
18      cis girls, yes.

19      BY MR. BLOCK:

20          Q     Okay.   Thank you.                       01:22:40

21          And you think H.B. 3293 -- well, let me say,  
22      do you know what I'm talking about when I refer to  
23      H.B. 3293?

24          A     I know we're talking about H.B.   I don't  
25      remember the number.   I will assume that it is the law       01:22:57

1 in West Virginia.

2 Q Okay. Great.

3 You think H.B. 3293 is justified by science;  
4 right?

5 MR. FRAMPTON: Object to the form and scope. 01:23:06

6 THE WITNESS: Yes, I do.

7 BY MR. BLOCK:

8 Q Okay. And you think it's justified by science  
9 even though it applies to trans girls who, as a result  
10 of puberty blockers and gender-affirming hormones, 01:23:23  
11 never go through endogenous puberty; right?

12 MR. FRAMPTON: Same objections.

13 THE WITNESS: Yes.

14 BY MR. BLOCK:

15 Q And you think H.B. 3293 is justified by 01:23:29  
16 science even though it applies to trans girls and women  
17 who go through endogenous puberty and then take  
18 medication to lower their levels of circulating  
19 testosterone; right?

20 MR. FRAMPTON: Same objections. 01:23:43

21 THE WITNESS: Yes.

22 BY MR. BLOCK:

23 Q Okay. And you think H.B. 3293 is justified by  
24 science even though it applies the same categorical  
25 rule to all sex-separated sports instead of creating 01:23:50

1 different standards for different sports; is that  
2 right?

3 MR. FRAMPTON: Same objections.

4 THE WITNESS: Yes.

5 BY MR. BLOCK: 01:24:01

6 Q Okay. I would like to direct your attention  
7 to paragraph 8 of your report. Let me know when you're  
8 there.

9 A It is on page 7, under item II, "Biological  
10 men"? 01:24:29

11 Q Yes.

12 A Okay.

13 Q Okay. Make sure I'm there myself.

14 Okay. So I'm just going to read this to you,  
15 beginning with the second sentence. (As read): 01:24:44

16 "I cited many" --

17 Actually, I'll begin with the first sentence.

18 Sorry.

19 You say (as read):

20 "Nevertheless, these differences have 01:24:52

21 been extensively studied and measured.

22 I cited many of these studies in the

23 first paper on this topic that I

24 prepared, which was submitted in

25 litigation in January 2020. 01:25:03

1 Since then, in light of current  
2 controversies, several authors have  
3 compiled valuable collections or  
4 reviews of data extensively  
5 documenting this objective fact about 01:25:11  
6 the human species, as manifest in  
7 almost all sports, each of which I  
8 have reviewed and found informative.  
9 Did I read that correctly so far?

10 A Yes, you did. 01:25:23

11 Q Okay. Thanks.

12 And you say (as read):

13 "These include Coleman (2020), Hilton  
14 & Lundberg (2021), World Rugby (2020),  
15 Harper (2021), Hamilton (2021), and a 01:25:36  
16 'Briefing Book' prepared by the  
17 Women's Sports Policy Working Group  
18 (2021).

19 Did I read that right?

20 A Yes. 01:25:46

21 Q Okay. And if you -- if you could look at  
22 the -- that list that you gave, and I'd like you to --  
23 to tell me -- and I -- and I will write it down --  
24 which of those sources support excluding transgender  
25 girls and women from sports if they have had puberty 01:26:08

Page 195

1 blockers and gender-affirming hormones and, as a  
2 result, have not gone through endogenous puberty.

3 MR. FRAMPTON: Object to the form.

4 THE WITNESS: Can you please rephrase that  
5 question? It was just kind of long. 01:26:21

6 BY MR. BLOCK:

7 Q Yeah, sure.

8 So I -- I'm talking about trans girls who have  
9 been on puberty blockers and, as a result, not  
10 experienced endogenous puberty. 01:26:33

11 Which of the sources identified in paragraph 8  
12 support excluding those trans girls who are on puberty  
13 blockers from participating in girls and women's  
14 sports?

15 MR. FRAMPTON: Object to the form. 01:26:47

16 THE WITNESS: I cannot recall right now which  
17 or if any of those papers discuss specifically puberty  
18 blockers.

19 BY MR. BLOCK:

20 Q Okay. So -- so you can't recall whether any 01:26:58  
21 of those papers discuss puberty blockers at all. Is  
22 that what you're saying?

23 A I'm saying I cannot recall if they advocate  
24 for preventing people who have used puberty blockers  
25 from participating in girls' sports. 01:27:15

1 Q Okay. Can you recall if any of them advocate  
2 in favor of allowing girls who use puberty blockers to  
3 participate in girls and women's sports?

4 A Well, as we discussed earlier, the Women's  
5 Sports Policy Working Group has a statement about that, 01:27:37  
6 and I think World Rugby has a statement about that.

7 Q Okay. Any others?

8 A I can't recall from the others.

9 Q Okay. So just in terms of what you can  
10 recall, at least two of them advocate in favor of 01:27:52  
11 allowing trans girls on puberty blockers to participate  
12 and you can't recall if any of the others support  
13 excluding girls who are transgender?

14 MR. TRYON: Objection.

15 MR. FRAMPTON: Same objection. Form. 01:28:17

16 THE WITNESS: So I can't recall specifically.  
17 I think Hilton and Lundberg have some mention on that  
18 topic, but again, I can't recall without referring back  
19 to the paper to look.

20 BY MR. BLOCK: 01:28:28

21 Q Okay. And so which of the sources cited in  
22 this paragraph advocate in favor of excluding trans  
23 girls and women who go through puberty and then  
24 suppress testosterone?

25 MR. FRAMPTON: Objection; form. 01:28:46

Page 197



1 Go ahead.

2 THE WITNESS: I think that is Hilton and  
3 Lundberg and World Rugby and Harper and Hamilton and  
4 the Women's Sports Policy Working Group.

5 BY MR. BLOCK: 01:28:55

6 Q Okay. So it's Hilton and Lundberg and Harper  
7 and World Rugby and Women's Sports Policy Working  
8 Group?

9 A And, I think, Hamilton.

10 Q Okay. You think that those five sources 01:29:12  
11 advocate in favor of excluding transgender girls and  
12 women from participating on girls and women's sports  
13 team if they have gone through endogenous puberty and  
14 then lowered their levels of circulating testosterone?

15 MR. FRAMPTON: Object to the form. 01:29:36

16 THE WITNESS: Yes, I think those all indicate  
17 that women deserve to compete in a protected category.

18 BY MR. BLOCK:

19 Q Okay. And then which of the sources cited in  
20 paragraph 8 advocate in favor of having a categorical 01:29:49  
21 rule that apply to all sports instead of  
22 differentiating based on what sport is at issue?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: So World Rugby is speaking  
25 specifically about rugby; and, therefore, I would not 01:30:14

Page 198

1 expect it to talk too much about other sports.

2 If I recall correctly, Hamilton states  
3 specifically that women deserve to compete in a  
4 protected category, which implies all sports.

5 Hilton and Lundberg advocate for sex 01:30:31  
6 segregation of sports, and, as far as I know, it's for  
7 all sports.

8 And Harper indicates that trans women have a  
9 retained athletic advantage compared to cisgender  
10 women. 01:30:45

11 BY MR. BLOCK:

12 Q And so just to clarify, my question isn't  
13 whether or not there should be separation in those --  
14 in all sports; the question is whether or not there  
15 should be the same rules for excluding transgender 01:30:58  
16 girls and women in all sports.

17 MR. FRAMPTON: Objection; form.

18 THE WITNESS: I guess you'll need to rephrase  
19 the question because I thought I answered it.

20 BY MR. BLOCK: 01:31:17

21 Q Yeah. So IOC used to have a single standard  
22 that applied to all sports. They then changed their  
23 policy so that individual standards could be crafted  
24 for different sports.

25 H.B. 3293 has a single standard that applies 01:31:30

1 to all sports.

2 My question is which of the sources support  
3 having a single standard that applies to all sports  
4 instead of having individual standards crafted to  
5 different sports.

01:31:46

6 MR. FRAMPTON: Objection to the form.

7 THE WITNESS: I would need to review each of  
8 them to be specific and certain. So going off of  
9 memory, Hilton and Lundberg, Hamilton, Women's  
10 Sport (sic) Policy Working Group, again, as I recall,  
11 without looking at them specifically, state that it  
12 should be categorical women's sports and men's sports.

01:32:05

13 MR. BLOCK: Okay. Can we go off the record  
14 for a second?

15 MR. FRAMPTON: Sure.

01:32:19

16 THE VIDEOGRAPHER: We are off the record at  
17 1:32 p.m.

18 (Recess.)

19 THE VIDEOGRAPHER: We are on the record at

20 2:08 p.m.

02:08:00

21 BY MR. BLOCK:

22 Q Good afternoon, Dr. Brown.

23 A Mr. Block, how are you doing?

24 Q I -- I'm good.

25 Okay. So, you know, we -- just before the

02:08:12

Page 200

1 break, we had just a series of questions about some of  
2 the sources quoted in your report, and I'm trying to  
3 just pull back, again, the -- the paragraph where this  
4 was discussed.

5 This is paragraph 8, page 7, from your expert 02:08:32  
6 report, you know, marked Exhibit 64.

7 A Yes.

8 Q And, you know, we -- we had a series of  
9 questions about them. And if you recall, my questions  
10 focused on three features of H.B. 3293. One is the 02:08:46  
11 fact that it excludes trans girls and women even if  
12 they've had blockers. Two is that it includes trans  
13 girls and women if they've gone through puberty and  
14 suppressed their testosterone. And three is that it  
15 has an across-the-board rule. And I asked you a series 02:09:09  
16 of questions about those elements of it, and now I'm  
17 going to turn to looking at the sources cited in  
18 paragraph 8, with an eye towards those elements. So  
19 that's not a question for you; that's just to orient  
20 you for the next couple of questions. 02:09:27

21 MR. BLOCK: So if you could look in your  
22 exhibit file, Exhibit 75, that should be a PDF of  
23 Coleman -- of the first Coleman article. Coleman 2020.

24 (Exhibit 75 was marked for identification

25 by the court reporter and is attached hereto.) 02:09:46

1 THE WITNESS: Yes. By Doriane Coleman and  
2 Michael Joyner and Donna L.

3 BY MR. BLOCK:

4 Q Yes. All right. So if we look at that  
5 article -- if you could turn to page 130 of her 02:10:12  
6 article. Let me know when you're there. It's near the  
7 end.

8 A Still scrolling. Almost there.

9 All right. Page 130. Duke Journal of Gender  
10 and Law Policy, Volume 27:69, 2020. 02:10:49

11 Q Yep. Okay.

12 Now, just to preface this, you know, this  
13 article uses the phrase "category affirming" and  
14 "category defeating."

15 Are you familiar with those terms? 02:11:01

16 A If I remember correctly, category affirming  
17 applies to male and female. Is that correct?

18 Q So my understanding, which I'll represent to  
19 you, is that category affirming means that the  
20 participation is consistent with the purposes of having 02:11:20  
21 a female category, and category defeating means  
22 allowing someone to participate would sort of defeat  
23 the purpose of having a female category.

24 So if -- does that ring a bell at all for you?

25 A Yes, it does. It does. 02:11:37

Page 202

1 Q Okay. So if you look at the -- the paragraph  
2 beginning "In high school" --

3 A Uh-huh.

4 Q -- "In high school intramural."

5 Do you see that? 02:11:48

6 A Yes, I do.

7 Q Okay. So it says (as read):

8 "In high school intramural, junior

9 varsity, and regular season play,

10 where institutional goals are 02:11:57

11 primarily related to health and

12 fitness and to the development of

13 social skills, unconditional inclusion

14 of gender diverse students according

15 to their gender identity rather than 02:12:06

16 their sex will usually be category

17 affirming."

18 Do you see that?

19 A I do.

20 Q Okay. So that sentence indicates that it 02:12:12

21 would be consistent with the female category according

22 to Coleman 2020 to have -- to allow trans girls to

23 participate in intramural, junior varsity and regular

24 season play without any medical interventions

25 whatsoever. Do you agree? 02:12:39

1 MR. FRAMPTON: Object to the form.

2 THE WITNESS: I'm looking at the sentence

3 after that, however, which has some exceptions, which

4 would include invitational and postseason

5 opportunities.

02:12:53

6 BY MR. BLOCK:

7 Q Yes. Is it your understanding that H.B. 3293

8 is limited to excluding trans girls from invitational

9 and postseason opportunities?

10 MR. FRAMPTON: Object to the form.

02:13:04

11 THE WITNESS: Yes, it is my understanding that

12 the law in West Virginia states that biological females

13 only compete in female sports.

14 BY MR. BLOCK:

15 Q Right. But not just -- not just the

02:13:22

16 invitational and postseason opportunities of female

17 sports; right?

18 MR. FRAMPTON: Same objection.

19 THE WITNESS: Yes, it is my understanding that

20 it is all parts of the sports.

02:13:31

21 BY MR. BLOCK:

22 Q Right. So the H.B. 3293 does not allow trans

23 girls to participate on girls' teams in the regular

24 season play of sports; correct?

25 MR. FRAMPTON: Object to the form.

02:13:46

1 THE WITNESS: I will trust your interpretation  
2 on that.

3 BY MR. BLOCK:

4 Q Would you support a policy of allowing trans  
5 girls to participate in regular season play? 02:14:01

6 MR. FRAMPTON: Object to the form and scope.

7 THE WITNESS: Inasmuch as biological males  
8 have inherent athletic advantages over biological  
9 females, I think the category should be retained.

10 BY MR. BLOCK: 02:14:19

11 Q Yeah, I know. I'm -- I'm sorry, I really just  
12 need like a clear answer to my questions.

13 This article draws a distinction between  
14 allowing trans girls to play in regular season play  
15 versus in postseason opportunities. I'm just trying to 02:14:30  
16 get an answer from you about whether you agree with  
17 that distinction or not. So --

18 MR. FRAMPTON: Objection to the form that  
19 misstates the article.

20 MR. BLOCK: Okay. 02:14:44

21 BY MR. BLOCK:

22 Q So --

23 MR. FRAMPTON: You can go ahead and answer.

24 BY MR. BLOCK:

25 Q So do you think that trans girls should not be 02:14:45



1 allowed to play on girls' teams for regular season  
2 play?

3 MR. FRAMPTON: Object to the form.

4 Go ahead.

5 THE WITNESS: I think that whether it's 02:14:58  
6 regular season, preseason, postseason, males have  
7 inherent athletic advantages; therefore, we should  
8 protect women's sports and men's sports.

9 BY MR. BLOCK:

10 Q So -- so that's a yes? 02:15:13

11 MR. FRAMPTON: Same objection.

12 THE WITNESS: I think you could take that as a  
13 yes.

14 BY MR. BLOCK:

15 Q Thank you. 02:15:17

16 All right. Then if you go down, continuing in  
17 the article, the paragraph that says -- let me find  
18 this. All right. The paragraph above that begins with  
19 "where combined." (As read):

20 Where combined teams or practices 02:15:44  
21 coupled with sex segregated  
22 competition cannot be -- cannot  
23 accomplish institutional goals, the  
24 accommodations approach detailed in  
25 Part IIIC4 should be adopted." 02:15:55

Page 206

1 And that cross references a section that I  
2 don't think we need to turn to for purposes of this  
3 question, but let me know if you disagree.

4 Then the -- then the paragraph continues,  
5 so -- (as read): 02:16:08

6 "This will be the case" --

7 Meaning the accommodations approach should be  
8 adopted.

9 (As read):

10 -- "in circumstances where sex 02:16:14

11 segregated teams and events remain

12 necessary to secure parity of

13 opportunity for females. Where the

14 accommodations approach is adopted,

15 trans students will train and compete 02:16:24

16 consistent with their gender identity

17 so long as their inclusion can be

18 relevantly conditioned. The NCAA

19 transgender policy is illustrative of

20 a hormonal condition in this category; 02:16:38

21 others that do not require

22 medicalization-- such as handicaps,

23 offsets, and quotas-- exist as more

24 appropriate models for the high school

25 sports space. 02:16:45

Page 207

1 Do you see that?

2 A Yes, I see that.

3 Q Okay. So am I correct in saying that this  
4 article points to the NCAA transgender policy as  
5 illustrative of a model of allowing trans girls to 02:16:58  
6 participate so long as their inclusion can be  
7 relatively -- relevantly conditioned?

8 MR. FRAMPTON: Object to the form.

9 THE WITNESS: And I'm unclear what they mean  
10 by "relevantly conditioned," so I don't know how I can 02:17:21  
11 answer that.

12 BY MR. BLOCK:

13 Q Okay. Why do you think they're citing the  
14 NCAA transgender policy?

15 A This is the old NCAA policy, not the current 02:17:35  
16 NCAA policy, and the old NCAA policy did have a  
17 statement about testosterone suppression.

18 Q So -- and so they are citing testosterone  
19 suppression as an example of an accommodations approach  
20 that should be used in circumstances for sex-segregated 02:18:00  
21 teams and events remain necessary to secure parity of  
22 opportunity for females; right?

23 MR. TRYON: Objection.

24 MR. FRAMPTON: Object to the form.

25 THE WITNESS: And again, what -- I'm still not 02:18:19

1 sure what you're asking me here.

2 BY MR. BLOCK:

3 Q Sure. I'm -- I'm asking, does this article  
4 support a policy of -- of excluding trans girls and  
5 women from all female athletic events, even if they 02:18:28  
6 suppress testosterone after puberty?

7 MR. FRAMPTON: Same objection.

8 THE WITNESS: As I read it, this article is  
9 kind of confusing on that.

10 MR. BLOCK: Okay. All right. I'll -- I'll 02:18:50  
11 leave that article at that.

12 Let's next look at the Hilton and Lundberg  
13 article, which I will cue up for you. For some reason,  
14 Exhibit Share is being slow.

15 (Exhibit 76 was marked for identification 02:19:43  
16 by the court reporter and is attached hereto.)

17 BY MR. BLOCK:

18 Q Okay. This should pop up on your exhibit list  
19 as Exhibit 76.

20 A All right. Exhibit 076 - Hilton - Transgender 02:20:00  
21 Women...?

22 Q Yes.

23 A Okay.

24 Q So, you know, we discussed this, you know,  
25 as -- you -- you cited this as an exam- -- as, 02:20:12

1 potentially, an example of an article supporting a  
2 categorical rule across sports; correct?

3 A That is correct.

4 Q Okay. And you cited this, potentially, as an  
5 example of an article supporting an exclusion of trans 02:20:29  
6 girls and women even if they've suppressed  
7 testosterone; right?

8 MR. FRAMPTON: Same -- object to the form.

9 THE WITNESS: Yes.

10 BY MR. BLOCK: 02:20:40

11 Q Okay. Great.

12 So let's look on page 211 of this article.

13 Let me know when you're there.

14 A All right. Yep, page 211.

15 Q Great. All right. Sorry. One second. 02:21:08

16 All right. If you look on the right-hand  
17 column, the second -- the third sentence there, where  
18 it begins, "It is also," do you see that?

19 A So page 211, right-hand column?

20 Q Second full paragraph, third sentence. 02:21:44

21 A Yes. "It is also important to recognize..."

22 Q Yeah. So that says (as read):

23 "It is also important to recognize the

24 performance in most sports may be

25 influenced by factors outside muscle 02:21:58

Page 210

1 mass and strength, and the balance

2 between inclusion, safety and fairness

3 therefore differs between sports."

4 Do you see that?

5 A Yes. 02:22:06

6 Q Okay. Does that refresh your recollection at

7 all about whether or not this article advocates for a

8 single across-the-board rule?

9 MR. FRAMPTON: Object to the form.

10 THE WITNESS: It doesn't make a clear 02:22:21

11 statement one way or the other, necessarily.

12 BY MR. BLOCK:

13 Q Okay. So let's continue reading.

14 If you go to the final full paragraph.

15 A Okay. 02:22:47

16 Q The second sentence beginning with

17 "regardless."

18 A Okay.

19 Q Okay. It says (as read):

20 "Regardless of what the future will 02:22:54

21 bring in terms of revised transgender

22 policies, it is clear that different

23 sports differ vastly in terms of

24 physiological determinants of success,

25 which may create safety considerations 02:23:05

Page 211

and may alter the importance of  
retained performance advantages.  
Thus, we argue against universal  
guidelines for transgender athletes in  
sport and instead propose that each  
individual sports federation evaluate  
their own conditions for inclusivity,  
fairness and safety."

02:23:17

9 Do you see that?

10	A Yes, I do.	02:23:26
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11 Q Okay. So is it fair to say that this article,  
12 they state that they argue against universal guidelines  
13 for transgender athletes in sport?

14 MR. FRAMPTON: Object to form.

15 THE WITNESS: Yes, that would be a correct 02:23:42  
16 statement based on what is written right there.

17 BY MR. BLOCK:

18 Q Okay. So based on what is written right  
19 there, they do not support a single categorical rule  
20 that applies equally to all sporting events; correct? 02:23:52

21 MR. FRAMPTON: Same objection.

22 THE WITNESS: Based on that sentence, that is  
23 correct.

24 BY MR. BLOCK:

25	Q Okay. Let's go to page 209 of this.	02:23:59
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Page 212

1           At the top of the page, on the left-hand  
2       column.

3           A    Okay.

4           Q    Okay. The paragraph beginning -- I mean, not  
5       the paragraph. The sentence beginning with the word       02:24:28  
6       "however."

7           Do you see that --

8           A    Yes.

9           Q    -- right in the middle of that first  
10      paragraph?   02:24:35

11          All right. It says (as read):

12          "However, given the plausible  
13          disadvantages with testosterone  
14          suppression mentioned in this section,  
15          together with the more marginal male                   02:24:43  
16          advantage in endurance-based sports,  
17          the balance between inclusion and  
18          fairness is likely closer to  
19          equilibrium in weight-bearing  
20          endurance-based sports compared with                   02:24:55  
21          strength-based sports where the male  
22          advantage is still substantial.

23          Do you see that?

24          A    Yes, I do.

25          Q    All right. So -- and feel free to read more       02:25:03



1 of that paragraph of which this is an excerpt, but is  
2 it fair to say that the authors of this article are  
3 saying there is a substantial advantage for  
4 strength-based sports for transgender women who  
5 suppress testosterone, but when it comes to -- when it 02:25:25  
6 comes to weightbearing endurance-based sports, the  
7 balance between inclusion and fairness is likely closer  
8 to equilibrium?

9 MR. FRAMPTON: Object to the form.

10 MR. TRYON: Objection. 02:25:45

11 THE WITNESS: I think you need to take that  
12 particular statement in context of the other  
13 information presented in this article in which the  
14 authors clearly demonstrate a 10 to 13 percent  
15 advantage in endurance performance for males compared 02:25:57  
16 to females relative to the 30 to 60 percent -- I guess  
17 I could look up at the table and tell you exactly the  
18 percent -- that they're showing for advantage in  
19 strength-based sports.

20 And then if you look at the para- -- the 02:26:10  
21 sentence right above what you've quoted, they mention  
22 about unknown effects on vari- -- a number of the  
23 determinants of endurance performance.

24 And so I really can't say too much beyond that  
25 that is kind of a speculative statement. 02:26:26

1 BY MR. BLOCK:

2 Q I see. So if you look on page 208, there's a  
3 discussion about -- on the right-hand column, there's a  
4 discussion about hemoglob- -- hemoglobin levels being  
5 reduced with once testosterone is suppressed; correct? 02:26:48

6 A Yes. Second paragraph down, page 208, starts  
7 "Circulating hemoglobin."

8 Q Right. And if you -- and then if you look at  
9 the next paragraph, it also says (as read):

10 "The typical increase in body fat 02:27:07  
11 noted in transgender women may also be  
12 a disadvantage for sporting activities  
13 (e.g. running) where body weight (or  
14 fat distribution) presents a marginal  
15 disadvantage." 02:27:21

16 Right?

17 A Correct.

18 Q Okay. All right. I'll leave it at that  
19 article.

20 We already -- you mentioned the World Rugby 02:27:36  
21 policies, and you already noted that World Rugby allows  
22 girls and women -- trans girls and women to -- I guess  
23 I'll start over.

24 You already mentioned that World Rugby allows  
25 trans women to participate in women's rugby if they've 02:27:55

Page 215

1 had puberty blockers and, therefore, not experienced  
2 endogenous puberty; right?

3 MR. FRAMPTON: Object to form.

4 Go ahead.

5 I'm sorry. I couldn't tell if you finished 02:28:11  
6 the question.

7 Go --

8 MR. FRAMPTON: But objection.

9 Go ahead and answer.

10 THE WITNESS: All right. That is my 02:28:14  
11 understanding of what World Rugby has stated.

12 BY MR. BLOCK:

13 Q Okay. So you don't need me to put on the  
14 screen a -- a copy of the World Rugby policy to -- to  
15 point out that provision, do you? 02:28:27

16 A I would ask you to put it on the screen so we  
17 can evaluate if they cite any sources to make that  
18 statement.

19 Q Sure. Let's put that -- let's put it on the  
20 screen. One second. 02:28:40

21 MS. DUPHILY: Did you say you wanted to put  
22 something on the screen or --

23 MR. BLOCK: No, I'll take -- I'll take care of  
24 it. I'm just looking up which specific one I want to  
25 put up. 02:29:03

1 MS. DUPHILY: Okay.

2 (Exhibit 77 was marked for identification

3 by the court reporter and is attached hereto.)

4 BY MR. BLOCK:

5 Q All right. So this is going to pop up as 02:29:22

6 marked as Exhibit 77. Let me know when you see it.

7 A All right. Exhibit 077 - World Rugby

8 Transgender...?

9 Q Yes. All right. And you see it says, "Can  
10 transgender women play rugby?" right? 02:29:58

11 A Yes.

12 Q Okay. And the first bullet point says (as  
13 read):

14 "Transgender women who transitioned  
15 pre-puberty and have not experienced 02:30:08  
16 the biological effects of testosterone  
17 during puberty and adolescence can  
18 play women's rugby (subject to  
19 confirmation of medical treatment and  
20 the timing thereof). 02:30:18

21 Right?

22 A Yes, I see that.

23 Q Okay. The third bullet point also says (as  
24 read):

25 "Transgender women can play 02:30:22

1 mixed-gender non-contact rugby."

2 Right?

3 A Yes.

4 Q Okay. And if we -- scroll down.

5 Do you know -- do you know if World Rugby at 02:31:00  
6 all talks about any advantages for -- between boys and  
7 girls before puberty?

8 A I don't recall this document from World Rugby  
9 evaluating differences between boys and girls  
10 prepuberty. 02:31:25

11 Q Can you recall any document from World Rugby  
12 evaluating that?

13 A Sitting here right now, I cannot recall that  
14 World Rugby has evaluated and cited sources on  
15 differences before puberty or the effect of puberty 02:31:45  
16 blockers on those differences.

17 Q Okay. All right.

18 So that's -- that's World Rugby. So we can  
19 put that down as not supporting a policy of excluding  
20 trans girls and women from participating in girls and 02:32:04  
21 women's sports if they've had puberty blockers;  
22 correct?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: I think it's important that  
25 that's specific to rugby. 02:32:18

Page 218

1 BY MR. BLOCK:

2 Q I -- I understand. But the -- the answer to  
3 my question is correct; right?

4 MR. FRAMPTON: Object to the form.

5 THE WITNESS: Isn't that what I said? 02:32:26

6 BY MR. BLOCK:

7 Q No. You -- you've made a different statement,  
8 so I -- I just -- I need you to answer my question  
9 before you make a different statement.

10 So it's fair to say that -- that 02:32:35

11 World Rugby -- this World Rugby policy does not support  
12 excluding trans girls and women from girls and women's  
13 teams in rugby if they have been on hormone blockers  
14 and not experien- -- puberty blockers and not  
15 experienced endogenous puberty; correct? 02:32:58

16 MR. FRAMPTON: Object to the form.

17 THE WITNESS: Yes, that is correct, as you  
18 stated, the World Rugby statement is about rugby.

19 (Exhibit 78 was marked for identification  
20 by the court reporter and is attached hereto.) 02:33:10

21 BY MR. BLOCK:

22 Q Okay. All right. Now let's look at the  
23 Harper 2021 article.

24 All right. This is going to appear on your  
25 screen as Exhibit 78. Please let me know once you have 02:33:36

1 it.

2 A All right. Exhibit 078 - Harper.

3 Q All right. See if I can grab -- all right.

4 So if you go to page 7. Let me know when you're there.

5 A All right. Page 7 of 9. 02:34:17

6 Q Yeah. So if you look at the first full  
7 paragraph, beginning with "in contrast," do you see  
8 that?

9 A Yes.

10 Q Okay. It says (as read): 02:34:35

11 "In contrast to strength-related data,  
12 blood cell findings revealed a  
13 different time course of change.

14 After 3-4 months on GAHT" -- which is  
15 gender-affirming hormone therapy -- 02:34:48

16 "the HCT or Hgb levels of transwomen  
17 matched those of cisgender women, with  
18 levels remaining stable within the

19 'normal' female range for studies  
20 lasting up to 36 months." 02:35:02

21 Do you see that?

22 A Yes, I do.

23 Q Okay. And then if you look at the bottom of  
24 the paragraph, so that's the top of the second column,  
25 it says (as read): 02:35:19

Page 220

1 "Given this, and that the changes in  
2 Hgb/HCT follow a different time course  
3 than strength changes, sport-specific  
4 regulations for transwomen in  
5 endurance versus strength sports may 02:35:30  
6 be needed."

7 Do you see that?

8 A Yes, I see that.

9 Q Okay. So is this Harper article advocating  
10 for a single categorical rule that doesn't distinguish 02:35:41  
11 between endurance sports and strength sports?

12 MR. FRAMPTON: Object to the form.

13 THE WITNESS: That would appear to be correct.

14 BY MR. BLOCK:

15 Q Okay. Now, if you look at the bottom right, 02:35:53  
16 so the last paragraph, bottom right of page 7, it says  
17 (as read):

18 "Although the data we present are  
19 meaningful, the effects of GAHT on  
20 these parameters, or indeed athletic 02:36:15  
21 performance in transgender people who  
22 engage in training and competition,  
23 remain unknown."

24 Do you see that?

25 A Yes. 02:36:23



1 Q Okay. Great.

2 And then if we move down -- actually, never

3 mind. I'll come -- I'll come back to this article.

4 I -- I have one more to quote for you, and then I'll

5 come back to this article.

02:36:44

6 If you go to page 8, at the very end, the

7 second to last sentence.

8 A Is that the one that starts "Whether

9 transgender"?

10 Q Yes. It says (as read):

02:36:57

11 Whether --

12 A Okay.

13 Q (As read):

14 "Whether transgender and cisgender

15 women can engage in meaningful sport,

02:37:02

16 even after gender-affirming hormone

17 therapy, is a highly debated question.

18 However, before this question can be

19 answered with any certainty, the

20 intricacies and complexity of factors

02:37:12

21 that feed into the development of

22 high-performance athletes warrant

23 further investigation of attributes

24 beyond those assessed herein."

25 Do you see that?

02:37:23

Page 222

1 A I see that.

2 Q Okay. So do the authors of this article  
3 believe that the information they present here allows a  
4 policy maker to determine with any certainty whether  
5 transgender and cisgender women can engage in 02:37:38  
6 meaningful sport after GAHT?

7 MR. FRAMPTON: Object to the form.

8 MR. TRYON: Objection.

9 THE WITNESS: The authors state that that  
10 question cannot be answered. 02:37:52

11 BY MR. BLOCK:

12 Q Okay. And you -- do you think the question  
13 can be answered?

14 MR. FRAMPTON: Object to the form.

15 Go ahead. 02:38:05

16 THE WITNESS: I think that the question can be  
17 answered sufficiently that we should not do away with  
18 existing policies until further information  
19 demonstrating the removal of biological male advantage  
20 has been obtained. 02:38:18

21 BY MR. BLOCK:

22 Q Okay. Let me ask that again.

23 So the -- the -- the -- because I'm just not  
24 sure it came out clearly.

25 So the authors of this article say -- I'm just 02:38:32

1 going to read it again for the record. (As read):

2 "Whether transgender and cisgender

3 women can engage in meaningful sport,

4 even after gender-affirming hormone

5 therapy, is a highly debated question.

02:38:47

6 However, before this question can be

7 answered with any certainty, the

8 intricacies and complexity of factors

9 that feed into the development of

10 high-performance athletes warrant

02:38:56

11 further investigation of attributes

12 beyond those assessed herein."

13 Do you agree or disagree with that statement?

14 MR. FRAMPTON: Object to the form.

15 Go ahead.

02:39:08

16 THE WITNESS: So what is the question I'm

17 agreeing with or not agreeing with?

18 BY MR. BLOCK:

19 Q I -- I believe the question is that until --

20 until the intricacies and complexity of factors that

02:39:24

21 feed into the development of high-performance

22 athletes -- let me ask the question again in a -- in a

23 clearer way.

24 Do you -- the -- the question is, do you -- is

25 the information presented in this article sufficient

02:39:37

Page 224

1 for a policy maker to answer with any certainty whether  
2 transgender and cisgender women can engage in  
3 meaningful sport after gender-affirming hormone  
4 therapy?

5 MR. FRAMPTON: Same objection.

02:39:55

6 Go ahead.

7 THE WITNESS: What is meant by "meaningful  
8 sport"?

9 BY MR. BLOCK:

10 Q What -- what do you think is meant by  
11 "meaningful sport"?

02:39:59

12 A I asked first.

13 Q So you can't answer the question without  
14 knowing more what they mean by "meaningful sport"?

15 A Yes, I would like know what they mean more by  
16 "meaningful sport."

02:40:19

17 Q Okay. Do you think that -- all right. We can  
18 come back to this article later too.

19 So a question about the Hamilton article. You  
20 have several times, if I'm right, referenced a  
21 statement in the Hamilton article about how women have  
22 a right to compete in a protected category; is that  
23 right?

02:40:45

24 A Yes, I have stated that.

25 Q Okay. Is there any other portion of the

02:41:02

1 Hamilton article that you remember?

2 MR. FRAMPTON: Object to the form.

3 THE WITNESS: I remember there was a lot of  
4 statements in the Hamilton article that seemed  
5 confusing and contradictory. 02:41:18

6 BY MR. BLOCK:

7 Q What do you mean by "confusing and  
8 contradictory"?

9 A Again, if I'm remembering the article  
10 correctly, it seemed like they would make a statement 02:41:30  
11 in one place about how trans women retain significant  
12 advantages and then in another statement state  
13 something about how those advantages wouldn't influence  
14 sport performance and then come back and state that  
15 those are advantages that influence sport performance. 02:41:48

16 I'm -- I'm grossly generalizing here, but that  
17 was my impression because I read a lot of the article.

18 Q Okay. Which portions of the article did you  
19 decide to cite in your report?

20 MR. FRAMPTON: Object to the form. 02:42:06

21 THE WITNESS: The -- if I'm remembering  
22 correctly, that is a direct quote from Hamilton, that  
23 cisgender women deserve to compete in a protected  
24 category, and I thought that was a very clear statement  
25 from that article. 02:42:22

Page 226

1 BY MR. BLOCK:

2 Q Okay. But -- but you had said before that  
3 several statements in the article are contradictory;  
4 right?

5 A Yes. 02:42:30

6 Q Okay. And in your report, you quoted the  
7 statements that you believe support excluding trans  
8 girls and women from female sports; is that right?

9 MR. FRAMPTON: Object to the form.

10 THE WITNESS: Yes, I quoted from Hamilton 02:42:56  
11 those parts that -- yeah, as you said.

12 BY MR. BLOCK:

13 Q Okay. But you didn't quote any of the  
14 portions of the Hamilton article that are contradictory  
15 with that; right? 02:43:19

16 MR. FRAMPTON: Object to the form.

17 THE WITNESS: I didn't put quotations in there  
18 that were confusing and contradictory to other  
19 quotations in the article.

20 BY MR. BLOCK: 02:43:28

21 Q Well, so if there's two quotations in the  
22 article, one of them supports allowing trans women to  
23 participate and the other one opposes allowing  
24 transgender women to participate, you decided to cite  
25 to the quote that opposes allowing trans women to 02:43:42

Page 227

1 participate; right?

2 MR. FRAMPTON: Object to the form.

3 THE WITNESS: Yes, that is what I quoted.

4 BY MR. BLOCK:

5 Q Okay. And why did you choose to cite the 02:43:55  
6 portions that you believe support opposing -- I'll ask  
7 again.

8 Why did you choose to cite to the portions  
9 that would support excluding transgender women instead  
10 of the portions of the article that you think support 02:44:08  
11 including them?

12 MR. FRAMPTON: Object to the form.

13 THE WITNESS: Because as I read the article  
14 and evaluated the information, I thought it was a clear  
15 statement opposing the inclusion of trans women in 02:44:22  
16 women's sports.

17 (Exhibit 79 was marked for identification  
18 by the court reporter and is attached hereto.)

19 BY MR. BLOCK:

20 Q Okay. So let's look at the -- let's look at 02:44:28  
21 the article.

22 So this will appear on your screen in a second  
23 as Exhibit 79. Let me know when it appears.

24 A All right. Exhibit 079 - Hamilton.

25 Q Okay. Is this article that you were 02:45:19

1       referencing when you cited to the 2021 Hamilton  
2       article?

3           A     Yes. I think I also refer to it in my  
4       declaration as the FIMS 2021 statement.

5           Q     Yeah. What -- what is FIMS? 02:45:33

6           A     It's the International Sports Medicine  
7       Federation. I think it's French, is why it's like  
8       Federation International Medicine Sport. That's why it  
9       becomes FIMS.

10          Q     Uh-huh. 02:45:46

11          A     Beyond that, it's just a -- it's a  
12       professional organization of people interested in  
13       sports medicine.

14          Q     Is -- in your -- your report, you say that the  
15       statement is "signed by more than 60 sports medicine 02:46:01  
16       experts from prestigious institutions around the  
17       world"; is that right?

18          A     What page is that on my declaration so I make  
19       sure I'm agreeing to a number that --

20          Q     Sure. It's paragraph 167, which is page 56 of 02:46:16  
21       the PDF. And it's page 51 of the bottom pagination.

22          A     All right. Yes, that is what I stated in my  
23       declaration.

24          Q     Okay. So the views expressed by this body,  
25       you think, are entitled to significant weight; right? 02:46:36



1 MR. FRAMPTON: Object to the form.

2 THE WITNESS: It is an -- it is a statement  
3 from an organization that is, you know, a respected  
4 organization.

5 BY MR. BLOCK: 02:46:58

6 Q Okay. If you turn to page 2 of this, so  
7 page 1402, at the top left, there's a little box that  
8 says "Key Points."

9 Do you see that?

10 A Yes. 02:47:08

11 Q Okay. Key Points. And the first point there  
12 is (as read):

13 "The use of testosterone concentration  
14 limits of 5 nmol/L in transwomen and  
15 DSD women athletes is a justifiable  
16 threshold based on the best available  
17 scientific evidence."

02:47:19

18 Did I read that right?

19 A You read that correctly.

20 Q And so of the points in this article 02:47:29  
21 highlighted as the key points, this is the first one;  
22 right?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: Yes, that appears to be the  
25 first highlighted key point. 02:47:39

Page 230

1 BY MR. BLOCK:

2 Q Okay. But you didn't choose to mention this  
3 first key point in your report; right?

4 A That is correct.

5 Q Okay. Why not? 02:47:49

6 A I disagree with that key point.

7 Q Okay. So you only highlighted -- you only  
8 cited to the portions of this article that you agreed  
9 with; right?

10 MR. FRAMPTON: Object to the form. 02:47:58

11 THE WITNESS: I cited the information that I  
12 agree with after evaluating the other scientific  
13 information.

14 BY MR. BLOCK:

15 Q Let's go to 1409. 02:48:22

16 Do you see that?

17 A Yes.

18 Q Okay. So the third bullet point here, when we  
19 get to -- this is -- I'm sorry, under -- this whole  
20 section of bullet points is under the subsection 5.7 02:48:41  
21 "FIMS Consensus Statements for the Integration of DSD  
22 Women and Transwomen Athletes into Elite Female Sport";  
23 right?

24 A That is correct.

25 Q All right. So based on the foregoing 02:48:53

Page 231

1 information discussed in the article, these are the  
2 consensus statements that FIMS agreed upon; right?

3 A That's a reasonable conclusion, yes.

4 Q Okay. So the third bullet point on the  
5 right-hand column is (as read):

02:49:13

6 "Transwomen have a (sic) right to  
7 compete in sports. However, cisgender  
8 women have the right to compete in a  
9 protected category."

10 Is that right?

02:49:26

11 A That's correct.

12 Q Okay. And this bullet point is a bullet point  
13 that you included in your report; right?

14 A Correct.

15 Q Okay. Do you know if you included any of the  
16 other bullet points in your report?

02:49:33

17 A I don't think I included any of the other  
18 bullet points.

19 Q Okay. So let's look at some of those other  
20 bullet points.

02:49:46

21 If you go two bullet points down from the --  
22 the one we just looked at, it says (as read):

23 "As each sport can vary greatly in  
24 terms of physiological demands, we  
25 support the view held also by others

02:49:58

1           stating that individual  
2           sport-governing bodies should develop  
3           their own individual policies based on  
4           broader guidelines developed on the  
5           best available scientific evidence,                 02:50:09  
6           determined experimentally from a  
7           variety of sources with a particular  
8           preference for studies on transwomen  
9           and DSD women athletes."

10	Did I read that right?	02:50:19
----	------------------------	----------

11	A Yes.
----	--------

12 Q Okay. So this bullet point supports having  
13 different policies developed by different sport's  
14 governing bodies; right?

15 MR. FRAMPTON: Object to the form. 02:50:32

16 THE WITNESS: That is a great example of a  
17 bullet point that seems contradictory to a previous  
18 statement.

19 BY MR. BLOCK:

20 Q Okay. But this statement here does not 02:50:39  
21 support an across-the-board policy that applies to all  
22 difference types of sports; is that right?

23 MR. FRAMPTON: Same objection.

24	Go ahead.
----	-----------

25 THE WITNESS: That is correct. 02:50:54

Page 233

1 BY MR. BLOCK:

2 Q And then two more bullet points down, it says

3 (as read):

4 "The use of serum testosterone

5 concentrations as the primary 02:51:17

6 biomarker to regulate the inclusion of

7 athletes into male and female

8 categories is currently the most

9 justified solution as it is supported

10 by the available scientific literature 02:51:27

11 and should be implemented at the elite

12 level, where there is an emphasis on

13 performance enhancement."

14 Did I read that right?

15 A Yes, you read that correctly. 02:51:38

16 Q Okay. And that's -- that's similar to the key

17 point that we talked about before, on the second page;

18 right?

19 A That is similar to that previous key point.

20 Q Okay. And then if you turn the page, the 02:51:46

21 first full -- fir- -- excuse me -- the first full

22 bullet point at the top, you know, again, is --

23 essentially restates the -- the key point that we

24 discussed before; is that right?

25 MR. FRAMPTON: Same objection. 02:52:04

Page 234

1 Go ahead.

2 THE WITNESS: Yes. That reiterates the

3 5 nmol/L threshold for testosterone.

4 BY MR. BLOCK:

5 Q Okay. And then the sentence also says that 02:52:14

6 that threshold may be modified as new evidence arises

7 for an event or sport-specific concentrations; is that

8 right?

9 A Yes, that is what it says.

10 Q Okay. And so -- so that -- that bullet point 02:52:28

11 and the other bullet point we looked at about the use

12 of serum testosterone and the other bullet point about

13 having individual policies for individual sports are

14 bullet points that you disagreed with; right?

15 A That is correct. 02:52:49

16 Q Okay. And because you disagreed with them,

17 you did not include them in your report?

18 MR. FRAMPTON: Object to the form.

19 Go ahead.

20 THE WITNESS: That is correct. 02:53:01

21 BY MR. BLOCK:

22 Q Okay. But at least according to this

23 document, the -- all the authors of this statement had

24 agreed on those bullet points as consensus statements;

25 right? 02:53:19

Page 235

1 MR. FRAMPTON: Object to the form.

2 THE WITNESS: Assuming that the authors, you  
3 know, agreed to it with their signature, that is a  
4 reasonable assumption.

5 BY MR. BLOCK: 02:53:31

6 Q Okay. Great.

7 And actually -- in fact -- one second.

8 All right. If you look at page 1403, it  
9 says -- at the bottom of that first paragraph, do you  
10 see where it says "all statements"? 02:54:16

11 A The bottom of which paragraph?

12 Q Sorry. On the right-hand column, on  
13 page 1403, under the "Methods" section, do you see  
14 that? The paragraph begins with -- with "here."  
15 "Here, we present." 02:54:37

16 A Yes.

17 Q Okay. So the last sentence -- the last two  
18 sentences say (as read):

19 "All statements received unanimous  
20 approval by all named authors except 02:54:48  
21 for the statement on the testosterone  
22 limit of 5 nmol/L, which received  
23 majority approval and the voting  
24 result is included in this (sic)  
25 article." 02:54:59

Page 236

1 Do you see that?

2 A Yes, I see that.

3 Q All right. So let's go down to what the  
4 voting results were for that.

5 Okay. It's actually on the bullet points that 02:55:20  
6 we looked at before, on 1410.

7 A On page 1410?

8 Q Uh-huh.

9 A All right.

10 Q Okay. So beginning with -- so the first -- 02:55:38  
11 the second full bullet point, it says (as read):

12 "The statement on the testosterone  
13 concentration threshold for transwomen  
14 and DSD women athletes was the only  
15 point of contention for the FIMS 02:55:48  
16 Panel. All 70 authors voted, of whom  
17 87% were in favour of the 5 nmol/L  
18 threshold, 2% of the authors were in  
19 favour of a threshold of 8 nmol/L, 2%  
20 were in favour of a threshold around 02:56:04  
21 the upper testosterone concentration  
22 of normal healthy females of  
23 0.2-1.7 nmol/L, and 8% of authors were  
24 in favour of no change to the limit  
25 until further evidence was acquired." 02:56:18

Page 237



1 Do you see that?

2 A Yes, I see that.

3 Q Okay. So -- so based on this paragraph, it  
4 appears that none of the 70 authors supported a policy  
5 of prohibiting trans women from participating, you 02:56:35  
6 know, regardless of how low they suppressed their  
7 circulating testosterone levels; right?

8 MR. FRAMPTON: Object to the form.

9 THE WITNESS: Can you restate the question?

10 BY MR. BLOCK: 02:56:58

11 Q Sure. Did any of the 70 au- -- 70 authors  
12 vote in favor of prohibiting trans women completely  
13 from prohibiting -- from -- from participating in  
14 women's sports regardless of how low they -- they  
15 lowered their levels of circulating testosterone? 02:57:15

16 MR. FRAMPTON: Same objection.

17 THE WITNESS: I would really like to read the  
18 article more and not just look at this particular  
19 statement on their decision on what they thought were  
20 acceptable testosterone levels. 02:57:27

21 BY MR. BLOCK:

22 Q Okay. But based on this paragraph, it appears  
23 that none of the 70 authors supported a policy  
24 analogous to H.B. 3293; right?

25 MR. FRAMPTON: Same objection. 02:57:46

Page 238

1 THE WITNESS: And this is another example of  
2 something that is confusing and contradictory to me, is  
3 when they say that cisgender women deserve a protected  
4 category and then have this kind of a statement.

5 BY MR. BLOCK: 02:57:57

6 Q Well, isn't one way to reconcile it that it's  
7 possible to have a protected category for cisgender  
8 women if appropriate conditions are placed on the  
9 participation of trans women?

10 MR. FRAMPTON: Object to the form. 02:58:17

11 THE WITNESS: My understanding of the  
12 intention of the authors is then it would no longer be  
13 a protected category.

14 BY MR. BLOCK:

15 Q Well, it would be protected from participation 02:58:24  
16 by cisgender men or anyone else with circulating levels  
17 of testosterone over the threshold limit; right?

18 MR. FRAMPTON: Same objection.

19 THE WITNESS: Within the -- the field, a  
20 protected category of women typically means biological 02:58:38  
21 women.

22 BY MR. BLOCK:

23 Q Okay. Let's look at the next document.

24 All right. And, actually, we already marked  
25 this one as an exhibit. This is the women's policy 02:58:57

1 briefing book. So this is Exhibit 69, if you could  
2 pull it up again.

3 A All right. Women's Sports Policy Working  
4 Group, Briefing Book?

5 Q Yes. 02:59:21

6 All right. If you look at page 15.

7 A All right. Page 15.

8 Q So at the -- the top, you can see this is  
9 their Proposed Amendment to the Title IX Regulations.

10 Do you see that? 03:00:04

11 A Yes.

12 Q Okay. So if we scroll down to subsection C,  
13 Treatment of Transgender Athletes, do you see that?

14 A Yes.

15 Q Okay. So -- so subsection (c)(1) says (as  
16 read): 03:00:12

17 Because trans girls/women who have not

18 begun male puberty do not have

19 significant male linked -- male

20 sex-linked advantages, they shall be 03:00:24

21 included in girls' and women's sports

22 without conditions or limitations.

23 Do you see that?

24 A I see that.

25 Q All right. So to the extent that H.B. 3293 03:00:33

1 prohibits trans girls and women from participating in  
2 women's sports, even if they have not experienced  
3 endogenous male puberty, the authors of this briefing  
4 book would disagree with H.B. 3293, to that extent?

5 MR. FRAMPTON: Object to the form.

03:00:56

6 THE WITNESS: I don't think that I can speak  
7 on behalf of these authors for what they agree or  
8 disagree with regarding H.B. 323 (sic) -- whatever it  
9 is. Sorry.

10 BY MR. BLOCK:

03:01:12

11 Q Okay. So do you think that subsection (c)(1)  
12 is consistent with H.B. 3293?

13 MR. FRAMPTON: Object to the form.

14 THE WITNESS: Well, (c)(1) says they shall be  
15 included in girls and women's sports.

03:01:28

16 BY MR. BLOCK:

17 Q So the answer to my question is yes?

18 MR. FRAMPTON: Object to the form.

19 BY MR. BLOCK:

20 Q I mean -- no, I'll just ask that again.

03:01:40

21 Can you just give me a "yes" or "no" answer so  
22 I don't have to worry about getting a clean transcript?

23 So just -- my question is, is section (c)(1)  
24 consistent with H.B. 3293?

25 MR. FRAMPTON: Same objection.

03:01:52

1 Go ahead.

2 THE WITNESS: I think there is an  
3 inconsistency there.

4 BY MR. BLOCK:

5 Q Okay. Thank you. 03:02:02

6 If you look at section (c)(3), it says (as  
7 read):

8 "Trans girls/women who have  
9 experienced all or part of male  
10 puberty and who have sufficiently 03:02:14  
11 mitigated their male sex-linked  
12 advantages – through surgery and/or  
13 gender affirming hormones consistent  
14 with the rules of their international  
15 federations – may participate in 03:02:25  
16 girls'/women's sport without  
17 additional conditions or limitations."

18 Do you see that?

19 A I see that.

20 Q Okay. And so section (c)(3) is also 03:02:32  
21 inconsistent with H.B. 3293; correct?

22 MR. FRAMPTON: Same objection.

23 Go ahead.

24 THE WITNESS: I would say that it may or may  
25 not, apparently depending on the rules of the 03:02:44

Page 242

1 international federations.

2 BY MR. BLOCK:

3 Q Okay. So are there any international  
4 federations, aside from rugby, that categorically  
5 exclude girls and women who are transgender from 03:02:58  
6 participating in the female category?

7 A There have been a lot of changes in those  
8 lately and a lot of organizations debating that, and so  
9 I can't say for certain whether there is or is not an  
10 organization or no organizations that specifically 03:03:16  
11 state that.

12 Q But you consider yourself an expert on this  
13 issue, don't you?

14 A Yes. And there's a lot of organizations that  
15 are in process of making decisions, and so I can't say 03:03:29  
16 what their decisions are when they have not released  
17 their decisions.

18 Q All right. Well, has any organization  
19 released a decision excluding trans girls and women  
20 from participating in the female category, even if they 03:03:43  
21 have lowered their circulating testosterone, besides  
22 rugby?

23 A I know swimming had a recent change, and I  
24 can't remember the exact wording on that, and -- again,  
25 that's what I can remember right now at this moment. 03:04:10

1 Q All right. Does -- did the recent change from  
2 swimming categorically exclude trans girls and women  
3 from participating in women's swimming events?

4 MR. FRAMPTON: Objection to the form.

5 THE WITNESS: I would need to look at the 03:04:28  
6 document to be sure.

7 BY MR. BLOCK:

8 Q Isn't it true that the new swimming policy  
9 extended the period of hormone suppression to three  
10 years? Does that sound familiar to you? 03:04:46

11 A As you say it, it sounds familiar, but I can't  
12 be sure if I'm remembering it because you told me I  
13 should remember it.

14 Q Okay. Well, we'll -- we'll get you a -- a  
15 copy of that. 03:05:05

16 And then subsection (4) says (as read):

17 "Trans girls/women who have  
18 experienced all or part of male  
19 puberty and who have not, or only  
20 insufficiently, mitigated their male 03:05:19  
21 sex-linked advantages according to the  
22 international federation standards in  
23 their sport may be accommodated within  
24 girls'/women's sports but not in  
25 head-to-head competition with female 03:05:31

1 athletes."

2 Do you see that?

3 A I see that.

4 Q Okay. And so that also is inconsistent with

5 H.B. 3293; correct?

03:05:39

6 MR. FRAMPTON: Object to the form.

7 THE WITNESS: This is somewhat of a confusing

8 statement because how is somehow included in women's

9 sports if they're not competing head-to-head with

10 women.

03:05:50

11 BY MR. BLOCK:

12 Q Well, there's scrimmages and, you know, team

13 practices and other events that are not for trophies.

14 Those are some examples; right?

15 A And I would ask, are they really included,

03:06:07

16 then, if they can only participate in limited aspects

17 of the sport.

18 Q Okay. But my question is whether or not this

19 is consistent with H.B. 3293.

20 And so section (c)(4) is inconsistent with

03:06:22

21 H.B. 3293; correct?

22 MR. FRAMPTON: Object to the form.

23 THE WITNESS: I would need to refer back to

24 the bill to be certain, but I think that your statement

25 is, yes, this is an inconsistency.

03:06:39

Page 245



1 BY MR. BLOCK:

2 Q Okay. Let's go back to your report. So  
3 that's Exhibit -- oh, I'm sorry, I just want to make  
4 sure we got through all of the sources cited in that  
5 paragraph of your report. So let me -- let's turn to 03:07:09  
6 your report and just make sure we've -- we've looked at  
7 all of them because I don't want to leave any out.

8 I believe -- is this on page 8? Or  
9 paragraph 8? It's paragraph 8, I believe. On page 7,  
10 paragraph 8. 03:07:30

11 Let me know when you're there.

12 A I'm there.

13 Q Okay. So we looked at Coleman 2020; correct?

14 A Yes.

15 Q And Hilton and Lundberg 2021; correct? 03:07:42

16 A Yes.

17 Q And World Rugby?

18 A Yes.

19 Q And Harper 2021?

20 A Yes. 03:07:53

21 Q And Hamilton 2021?

22 A Yes.

23 Q And a briefing book prepared by the Women's  
24 Sports Policy Working Group 2021; right?

25 A Yes. 03:08:00

1 Q Okay. So now that we've looked at all of  
2 those, do any of them advocate in favor of excluding  
3 girls and women who are trans from participating in  
4 women's sports if they have had puberty blockers and  
5 not gone through endogenous puberty? 03:08:17

6 MR. FRAMPTON: Object to the form.

7 Go ahead.

8 THE WITNESS: I still think that that  
9 statement from Hamilton, where they say women deserve a  
10 protected category, with the understanding that 03:08:24  
11 protected category, as it is used in the field, means  
12 biological women only.

13 BY MR. BLOCK:

14 Q Okay. But other portions of the -- the  
15 Hamilton statement don't support that; correct? 03:08:39

16 A Correct.

17 Q Okay. So after reviewing all these sources,  
18 let's see, how -- how many of them do we think support  
19 excluding girls and women who are transgender if  
20 they've experienced puberty and then suppressed their 03:09:04  
21 testosterone?

22 MR. FRAMPTON: Object to the form.

23 THE WITNESS: So as we've reviewed these  
24 sitting here, I would say Hamilton supports it, with  
25 the caveat that it is, at times, contradictory. 03:09:20

Page 247

1 BY MR. BLOCK:

2 Q Okay. And did any of these sources support  
3 having a single across-the-board rule that applied to  
4 all sporting events?

5 MR. FRAMPTON: Object to the form. 03:09:37

6 THE WITNESS: Again, the same statement with  
7 Hamilton seems to state that, with the caveat that, I  
8 guess, you and I can agree there is some contradiction  
9 or confusion there.

10 BY MR. BLOCK: 03:09:51

11 Q Okay. Let's look at page 4 of your report.

12 A All right. Page 4, Overview.

13 Q Yes. If you look at the second bullet point.

14 A Okay.

15 Q It says (as read): 03:10:13

16 "Biological male physiology is the  
17 basis for the performance advantage  
18 that men, adolescent boys, or male  
19 children have over women, adolescent  
20 girls, or female children in almost  
21 all athletic events."

22 Did I read that right?

23 A Yes, you read that correctly.

24 Q Okay. And so your expert opinions about  
25 transgender women are based on the premise that 03:10:34

Page 248

1 transgender women who have not had any gender-affirming  
2 medical interventions will have the same physiology as  
3 cisgender men; right?

4 MR. FRAMPTON: Object to the form.

5 THE WITNESS: Yes, they are still biological 03:10:51  
6 males.

7 BY MR. BLOCK:

8 Q And will have the same physiological  
9 characteristics that are the basis for the performance  
10 advantage; correct? 03:10:59

11 MR. FRAMPTON: Same objection.

12 THE WITNESS: That is correct. Male  
13 physiology is the basis of the performance advantage.

14 BY MR. BLOCK:

15 Q So let's go back to that Hamilton article we 03:11:09  
16 were discussing. So that is, I believe, Exhibit 79.

17 A All right.

18 Q Okay. Can you go to page 1402, please.

19 A All right. 1402.

20 Q Okay. Pull that up. 03:11:39

21 If you look on the right-hand column, on this  
22 little table 1 --

23 A Yes.

24 Q -- do you see that?

25 And then you go -- one, two, three, four -- 03:11:54

1 five items down there, there's a line that begins with  
2 "the assumption."

3 Do you see that?

4 A I do see that.

5 Q Okay. And that sentence says (as read): 03:12:04

6 "The assumption that the physiology of  
7 elite DSD women and transwomen  
8 athletes is the same as elite male  
9 athletes is an oversimplified view."

10 Do you see that? 03:12:15

11 A I see that statement.

12 Q Okay. And you didn't cite to that statement  
13 in your report; right?

14 A I disagree with that statement.

15 Q And, therefore, because you disagreed with it, 03:12:23  
16 you chose not to cite it in your report?

17 MR. FRAMPTON: Object to the form.

18 THE WITNESS: I don't think it's appropriate  
19 to cite a statement that I don't think I can defend.

20 BY MR. BLOCK: 03:12:36

21 Q Okay. Do you think it's appropriate to cite  
22 an article who -- that contains many statements that --  
23 that you don't think you can defend?

24 MR. FRAMPTON: Object to the form.

25 THE WITNESS: Yes. Trying to cite that there 03:12:53

1 is a lot of information out there.

2 BY MR. BLOCK:

3 Q I see.

4 If we go to page 1406 -- well, actually,  
5 before going there, were you aware of this statement in 03:13:07  
6 the Hamilton article at the time that you wrote your  
7 report?

8 A Yes. I cited the Hamilton article. I had  
9 read it.

10 Q All right. You -- okay. So you read the 03:13:22  
11 whole thing, and then you picked out certain statements  
12 to cite?

13 A Correct.

14 Q Okay. So if you go to page 1406.

15 Do you -- do you see your role in this case as 03:13:45  
16 an advocate for one side or the other?

17 MR. FRAMPTON: Object to the form.

18 THE WITNESS: I have been retained to give my  
19 expert opinion, my expert analysis of the data.

20 BY MR. BLOCK: 03:14:01

21 Q All right. And to -- but do -- do you see  
22 your role in this case as presenting the portions of  
23 the data that support one side?

24 MR. FRAMPTON: Object to the form.

25 THE WITNESS: I think my role is to present 03:14:19

Page 251

1 the data and the information with which I agree with as  
2 an expert.

3 BY MR. BLOCK:

4 Q Okay. So you -- you don't see your role in  
5 this case as prevent- -- presenting an overview of the 03:14:32  
6 data for and against H.B. 3293; right?

7 MR. TRYON: Objection.

8 MR. FRAMPTON: Object to form.

9 THE WITNESS: I think I'm suppo- -- my role is  
10 presenting the information from the best of my 03:14:52  
11 expertise and analysis of it, which -- what I think is  
12 the correct information.

13 BY MR. BLOCK:

14 Q Okay. Not -- so -- so you don't think -- if  
15 the Court wanted just an overview of the information 03:15:07  
16 out there for and against H.B. 3293, your expert report  
17 wouldn't be the source of getting that; right?

18 MR. FRAMPTON: Object to the form.

19 MR. TRYON: Objection.

20 THE WITNESS: I would think that would be a 03:15:27  
21 specific request made by the Court to get information.

22 BY MR. BLOCK:

23 Q So -- but you saw -- but you said, when you  
24 wrote your blog post, that, you know, the purpose of  
25 that blog post was to provide information for educators 03:15:46

1 to use on their own, to teach the subject; right?

2 A That is correct.

3 Q Okay. And so you wrote that blog post with a  
4 different purpose in mind than you wrote this document;  
5 right?

03:16:03

6 A Yes. The blog post was intended for  
7 educators.

8 Q And do you think that it's important for  
9 educators to have accurate information?

10 MR. FRAMPTON: Object to the form.

03:16:20

11 THE WITNESS: Yes, educators need accurate  
12 information.

13 BY MR. BLOCK:

14 Q Okay. So do -- do you think educators need  
15 information different from what the court needs?

03:16:26

16 MR. FRAMPTON: Object to the form.

17 THE WITNESS: Truthful information is truthful  
18 information, and I've done my best to present truthful  
19 information.

20 BY MR. BLOCK:

03:16:40

21 Q Okay. So let's go to 1406 of -- of Hamilton.

22 MR. TRYON: Before you go on.

23 Mr. Frampton, I can't hear you when you're  
24 objecting. If you could speak a little louder, please.

25 MR. FRAMPTON: Sure.

03:17:08

Page 253



1 BY MR. BLOCK:

2 Q So in -- in 1406, in the paragraph beginning  
3 with the words "despite the lack," do you see that?

4 A Page 1406?

5 Q Left -- left-hand column -- 03:17:23

6 A Okay. Yeah. That's three down?

7 Q Yes.

8 A Okay.

9 Q Okay. If you look at, I think, the third  
10 sentence, after it says "Table 1," in parentheses, it 03:17:39  
11 says (as read):

12 "Data showing lower baseline isometric  
13 torque and muscle volume in transwomen  
14 compared to cisgender males highlight  
15 the problematic nature of inferring 03:17:50  
16 that transwomen and cisgender males  
17 are the same, as this ignores the  
18 impact of gender-affirming treatments  
19 such as HRT and GAS and the  
20 psychological effects of gender 03:18:00  
21 dysphoria such as low self-esteem,  
22 anxiety and/or depression, and  
23 becoming socially isolated."

24 Do you see that?

25 A I see that. 03:18:09

Page 254

1 Q Okay. Do you disagree that there is data  
2 showing lower baseline isometric torque and muscle  
3 volume for trans women compared to cisgender women?

4 A So if I'm remembering correctly, reference 51  
5 here is probably to the -- the article by Wiik and 03:18:26  
6 Lundberg and others. That is the only paper I'm aware  
7 of that evaluated isometric torque and muscle volume in  
8 transgender individuals.

9 Can I refer to that paper to verify?

10 Q Yeah. If you look at 51, it -- it does go 03:18:40  
11 back to the -- the Wiik article.

12 You're saying you want to look directly at the  
13 Wiik article?

14 A I would like to.

15 Q All right. Well, we can try to make time for 03:18:51  
16 that later.

17 So -- but sitting here, you're saying you're  
18 not sure that that sentence accurately reports the --  
19 the findings of the Wiik article?

20 A Yeah, I can't remember for -- right now what 03:19:08  
21 the baseline data were in the Wiik article, whether  
22 they were statistically significant or just numerically  
23 different or what.

24 Q Okay.

25 A I can see the graph in my mind, but not in 03:19:22

1 enough detail to completely answer that.

2 Q Okay. Hold on one second. All right.

3 Let's go to the Harper article again. So that  
4 is Exhibit 78.

5 A All right. 03:20:13

6 Q So if you go to page 7 of the Harper.

7 A All right.

8 Q All right. There's a paragraph that begins  
9 with "of interest."

10 Do you see that? 03:20:42

11 A Right-hand side, first full paragraph, under  
12 the table?

13 Q Yes.

14 A Okay.

15 Q All right. Where it says (as read): 03:20:48

16 "Of interest, compared with cisgender  
17 men, hormone-naive transwomen  
18 demonstrate 6.4%-8.0% lower lean body  
19 mass, 6.0%-11.4% lower muscle CSA and  
20 approximately 10%-14% lower handgrip  
21 strength."

22 Do you see that?

23 A Yes.

24 Q And then it says (as read):

25 "This disparity is noteworthy given 03:21:14

Page 256

1           that hormone-naive transwomen and  
2           cisgender men have similar  
3           testosterone levels."

4           Do you see that?

5           A    Yes. 03:21:20

6           Q    Okay.  So do you have any reason to disagree  
7           with those reported findings?

8           A    I would like to include the next sentence,  
9           where it says "explanations for this strength  
10          difference are unclear," and continuing on with that, 03:21:37  
11          indicating that the trans women may actively refrain  
12          from building muscle and/or engaging in disordered  
13          eating.

14          So there's a whole statement of speculative  
15          explanations for that. 03:21:51

16          Q    So do you -- do you have any explanations for  
17          those differences?

18          A    Well, we have no known biological markers in  
19          which we can draw blood or a sample of something to say  
20          that a person is transgender.  And so it would 03:22:10  
21          apparently be a social explanation for why the  
22          transgender individuals have lower handgrip strength  
23          and smaller muscles.

24          Q    Okay.  And so does that -- does that affect  
25          whether or not having lower handgrip strength and 03:22:31

1 stronger (sic) muscles gives an advantage in athletic  
2 performance?

3 MR. FRAMPTON: Object to the form.

4 Go ahead.

5 THE WITNESS: In those cited studies, the 03:22:43  
6 handgrip strength of the trans women was in the 90 to  
7 95th percentile for cisgender women.

8 So while they may be slightly less strong than  
9 a typical male, they are considerably stronger than the  
10 typical female. 03:22:57

11 Q Okay. Right. But my -- but my question is,  
12 in terms of comparing the strength of trans women to  
13 the strength of cis men, don't those studies show that,  
14 with respect to those indicators of athletic  
15 performance, the trans women are not the same as the 03:23:19  
16 cis men?

17 MR. FRAMPTON: Object to the form.

18 THE WITNESS: So, Mr. Block, are you trying to  
19 say that smaller, weaker men are trans women?

20 BY MR. BLOCK: 03:23:37

21 Q I'm -- I'm asking my question.

22 Can you answer my question, please?

23 A Could you please clarify the question?

24 Q Yes.

25 Don't those -- doesn't that data show that -- 03:23:47

1 to use the words of Harper -- hormone-naive trans women  
2 may not, on average, have the same athletic attributes  
3 as cisgender men?

4 MR. FRAMPTON: Object to the form.

5 Go ahead. 03:24:05

6 THE WITNESS: I think there are a whole lot of  
7 qualifying statements that need to be included in that.

8 BY MR. BLOCK:

9 Q Okay. And so putting aside the cause of these  
10 differences, putting aside whether those causes are, 03:24:22  
11 you know, physiological or as a result of social  
12 factors, all right, at the end of the day, regardless  
13 of the cause, doesn't this data reflect that on a  
14 population level, hormone-naive trans women may not, on  
15 average, have the same athletic attributes as cisgender 03:24:46  
16 men?

17 MR. FRAMPTON: Same objection.

18 Go ahead.

19 THE WITNESS: Those studies were not  
20 attempting to evaluate baseline population-wide 03:24:57  
21 strength for trans women, and so I don't think that we  
22 can accurately extrapolate them to the population of  
23 trans women.

24 BY MR. BLOCK:

25 Q Okay. If the participa- -- in the 03:25:08

1 participants on -- in those studies had performed  
2 physical fitness tests alongside cisgender men, would  
3 it be reasonable to assume that the participants in  
4 these studies would not have performed as well on those  
5 physical fitness tests?

03:25:26

6 MR. FRAMPTON: Object to form.

7 THE WITNESS: So if we are stating these  
8 participants, yes, these participants were not as  
9 strong as their comparison group.

10 But I do again want to caveat that neither of  
11 these groups really were designed to represent  
12 population-wide strength or body mass distributions.

03:25:40

13 BY MR. BLOCK:

14 Q Now, you've discussed in your article -- or  
15 your article -- you've discussed in your report, you  
16 know, your view that once you have acquired muscle  
17 mass, that lowering your circulating testosterone does  
18 not sufficiently reduce that muscle mass to eliminate a  
19 performance advantage; is that right?

03:25:57

20 A I think you've appropriately characterized  
21 what I've stated.

03:26:20

22 Q Thank you.

23 And so in your article, do -- or in your  
24 report, do you discuss at all whether if someone lowers  
25 their circulating testosterone before acquiring a lot

03:26:37

Page 260

1 of muscle mass or doing exercises or training, whether  
2 having a lower level of testosterone would restrict  
3 their ability to add new muscle mass?

4 MR. FRAMPTON: Object to the form.

5 THE WITNESS: I don't think I addressed that 03:27:04  
6 topic specifically, as far as how much reducing  
7 testosterone and then engaging in training can  
8 compensate for reduced testosterone.

9 BY MR. BLOCK:

10 Q Okay. So let's say the -- the trans women in 03:27:16  
11 this study and the cis men in the study both engage in  
12 the same types of exercise regimens, but the trans  
13 women, given their lower baselines and -- have these  
14 lower baselines and have lowered their testosterone  
15 before engaging in these exercise regimens, is it -- do 03:27:49  
16 you have an expert opinion on whether you would expect  
17 that these trans women, having lowered their  
18 testosterone levels, would be able to acquire new  
19 muscle mass at the same degree as the cis men who had  
20 not lowered their testosterone levels? 03:28:05

21 MR. FRAMPTON: Object to the form.

22 THE WITNESS: Based on research not cited in  
23 my article, because I didn't think it was worth going  
24 into in that particular publication -- or that expert  
25 declaration, there is information that in middle-aged 03:28:20



1 men who suppress their testosterone and such as a  
2 treatment for prostate health problems, they're able to  
3 engage in strength training to overcome the lost  
4 testosterone. And so that is the closest to a  
5 speculative statement we can make regarding of how 03:28:43  
6 transgender women, or trans women, would respond to  
7 training.

8 BY MR. BLOCK:

9 Q Okay. If we go back to the Hamilton article  
10 for a second. I apologize. If you go to 1407 of the 03:29:05  
11 Hamilton article.

12 Let me know when you're there, okay?

13 A All right. 1407. I'm there.

14 Q Uh-huh. It says -- halfway through the -- the  
15 first paragraph there, there's a sentence that begins 03:30:11  
16 "in contrast."

17 Do you see that?

18 A Page 1407. Are we on the left-hand side?

19 Q I'm sorry, on the right-hand side.

20 A Ah, okay. I wondered. 03:30:26

21 There we go. Right-hand side, just after  
22 citation to 61, it says, "In contrast."

23 Q Right. It says (as read):

24 "In contrast, when bioavailable

25 testosterone was reduced to castrate 03:30:34

1 levels in young men, isometric

2 strength did not increase after

3 resistance exercise training."

4 Are you familiar with that study that --

5 that's being referred to?

03:30:48

6 A I am not familiar with that study.

7 Q Okay. If you look at footnote 62 of the

8 article, it says it's a study by Kvorning,

9 K-V-O-R-N-I-N-G, from 2006.

10 Just sitting here today, does -- are you

03:31:09

11 familiar with the Kvorning study from 2006?

12 A That -- that study is not ringing a bell.

13 Q Okay.

14 Okay. The -- the name of the study is

15 "Suppression of endogenous testosterone production

03:31:27

16 attenuates the response to strength training: a

17 randomized, placebo-controlled, and blinded

18 intervention study."

19 Still doesn't ring a bell?

20 A Still not ringing a bell.

03:31:40

21 Q Okay. So if -- if -- from the title of that

22 study, does the study seem to be in tension with the

23 study you just cited to me about how people, the

24 cisgender men, who are on therapies that lower their

25 tosterone -- testosterone being able to have strength

03:32:01

Page 263

1 training to overcome the deficit?

2 MR. FRAMPTON: Object to the form.

3 THE WITNESS: Looking at that study and the  
4 study I was referring to, it appears that the two are  
5 somewhat contradictory, but it's also hard to say with 03:32:21  
6 this saying young men and the older -- the other one  
7 was dealing with older men.

8 Without looking at both studies side by side,  
9 it's really hard to make a comparison.

10 BY MR. BLOCK: 03:32:32

11 Q Okay. So in the -- in the Hamilton article,  
12 after the sentence I read, it says (as read):

13 "Assuming these findings are  
14 replicated and if extrapolated to  
15 elite DSD women athletes and 03:32:46  
16 transwomen athletes, they would imply  
17 that decreasing bioavailable  
18 testosterone concentrations would  
19 mitigate to some extent any previous  
20 sporting advantage due to the 03:32:57  
21 previously high testosterone  
22 concentrations."

23 Do you agree with that sentence?

24 MR. FRAMPTON: Object to the form.

25 THE WITNESS: Would mitigate to some extent, 03:33:12

1	yes.
---	------

2 BY MR. BLOCK:

3	Q	Okay.
---	---	-------

4 MR. BLOCK: Can we take a break and go off the

5	record?	03:33:19
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6 THE VIDEOGRAPHER: We are off -- off the

7	record at 3:33 p.m.
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8 (Recess.)

9 THE VIDEOGRAPHER: We are on the record at

10	3:43 p.m.	03:43:29
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11 BY MR. BLOCK:

12 Q Hi, Dr. Brown. I -- I won't keep you too much

13 longer, but -- but I do have some -- I'm going to keep

14     you a little bit longer, though.

15	If --	03:43:39
----	-------	----------

16	A	No worries.
----	---	-------------

17 Q If we could go to the Hilton article again,

18 which is marked as Exhibit -- I can't see it on my

19 computer. One sec. The Hilton article is Exhibit 76.

20	A All right.	03:44:05
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21 Q All right. Thanks.

22 If you look at page 208, under 4.3.

23	A Yes.
----	--------

24 Q All right. Just the second sentence there, it

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25 |      says (as read) :                                03:44:35
```

Page 265

1 "Sex differences in endurance

2 performance are generally smaller than

3 for events relying more on muscle mass

4 and explosive strength."

5 Do you see that?

03:44:43

6 A Yes, I see that.

7 Q Okay. Do you -- do you agree with that

8 statement?

9 A Typically, the differences between males and

10 females for endurance running events or swimming events 03:44:52

11 are somewhere in the range of 10 to 13 percent compared

12 to the 25 percent or more in strength sports.

13 Q So -- so that means you agree with that

14 statement?

15 A Yes.

03:45:08

16 Q Okay. Thanks.

17 All right. If you look at, again, 208, it

18 says -- the paragraph before 4.3.

19 A That big long one?

20 Q Yep.

03:45:49

21 And near -- like two-thirds down, there's a

22 sentence that begins with "furthermore."

23 Do you see that?

24 A Okay. Furthermore, given the (sic) cohorts?

25 Q Yeah. So I -- I just want to direct your

03:46:01

Page 266

1 attention to the first half of the sentence. This is  
2 the Hilton article. And it says (as read):

3 "Furthermore, given that cohorts of  
4 transgender women often have slightly  
5 lower baseline measurements of muscle 03:46:15  
6 and strength than control males."

7 Do you see that?

8 A Yes.

9 Q Okay. And then if you follow that footnote,  
10 it goes to footnote 53, and there's an article by 03:46:25  
11 someone whose name I can't pronounce. It's Van  
12 C-A-E-N-E-G-E-M.

13 Are you able to click through to footnote 53?

14 A Can we agree to call that Van C?

15 Q Oh, good -- good call. Yes. 03:46:46

16 A Yeah, I don't know how to say the last name  
17 either.

18 Q Okay. All right.

19 And so could you -- you see the footnote?

20 A Yes. 03:46:52

21 Q Okay. And the footnote is to an article that  
22 says, "Preservation of volumetric bone density and  
23 geometry in trans women during cross-sex hormonal  
24 therapy: a prospective observational study"; right?

25 A Yes. 03:47:06

1 Q Okay. And so Hilton cites this article for  
2 the proposition that -- I have to get -- I don't want  
3 to misquote her. Hold on -- it says -- cites for the  
4 proposition that cohorts of transgender women often  
5 have slightly lower baseline measurements of muscle and 03:47:36  
6 strength than control males; right?

7 A Yes, that is what it says.

8 Q Okay. And so that's a sim- -- that's similar  
9 to the statement in the Hamilton article; right?

10 MR. FRAMPTON: Object to the form. 03:47:47

11 THE WITNESS: I'm sorry, can we go back to  
12 what the Hamilton article says, or could you --

13 BY MR. BLOCK:

14 Q Sorry, I'm -- I just want to -- you know, we  
15 looked at two sources that talk about how the baseline 03:47:54  
16 measurements of trans women are not always the same as  
17 the baseline measurements of control cis men. And we  
18 looked at two studies saying that, one was the Hamilton  
19 study and one was the Harper study. And all I want to  
20 do is add this study as -- this article as a third 03:48:13  
21 article making that observation.

22 Would you agree that this article is another  
23 article that at least makes the observation that the  
24 baseline measurements for trans women appear to often  
25 be lower than the baseline measurements for cisgender 03:48:36

1 men who are used as controls?

2 MR. FRAMPTON: Object to the form.

3 THE WITNESS: I -- I think in this article by  
4 Hilton, a couple of key points here is where it says  
5 "cohorts of transgender women," not saying population 03:48:53  
6 representative sampling or anything like that. And  
7 then there's a lot of further qualifications that you  
8 go on in that sentence emphasizing caution with  
9 interpreting these data.

10 BY MR. BLOCK: 03:49:10

11 Q Yeah. Well, so, actually, I have a question  
12 for you.

13 So you talk about how these are just cohorts  
14 of trans women, not population samples, but you cite to  
15 these same articles in support of your argument that -- 03:49:20  
16 about the effects of gender-affirming hormones, don't  
17 you?

18 A Yes, I cite these articles.

19 Q Okay. So how come -- can't the same caveat be  
20 made that whatever conclusions you're drawing about 03:49:39  
21 trans women from these articles don't necessarily apply  
22 to trans women at a population level?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: These are the best sources of  
25 information that we have, and the studies looking at 03:49:54



1 changes over time or changes in strength, muscle mass  
2 and such that I've cited, that was the purpose of the  
3 study, was to evaluate those changes and then  
4 statistically apply it to a population whereas those  
5 studies were not designed to get a population baseline 03:50:13  
6 sampling for normative data.

7 BY MR. BLOCK:

8 Q Okay. Well, that -- I'm glad you made that  
9 point because -- let's go to -- to your expert report  
10 where -- on page -- on page -- let me make sure I have 03:50:28  
11 the right page.

12 So page 2 -- actually, go to page 1, so I'm  
13 not missing anything.

14 Let me know when you're at page 1.

15 A So is page 1 Personal Qualifications and 03:51:02  
16 Disclosure?

17 Q It is.

18 A Okay.

19 Q So right before the bullet points, you say (as  
20 read): 03:51:08

21 "Articles that I have published that  
22 are closely related to topics that I  
23 discuss in this white paper  
24 include..."

25 And then there's a list. Right? 03:51:14

Page 270

1 A Yes.

2 Q And -- and then if you go to the -- the second  
3 to last bullet point.

4 A Yes.

5 Q Do you see that? 03:51:26

6 That says (as read):

7 "A study finding (among other things)

8 that height, body mass, and maximal

9 oxygen consumption were higher in a

10 group of male NCAA Division 2 distance 03:51:36

11 runners, while women NCAA Division 2

12 distance runners had higher percent

13 body fat."

14 Do you see that?

15 A Yes. 03:51:48

16 Q Okay. And we discussed this study during our  
17 previous deposition. Do you remember that?

18 A Yeah. It's a fun paper.

19 Q Yeah. But we discussed how this data about  
20 height, body mass and oxygen consumption was base- -- 03:52:00

21 was data -- baseline data that you took of -- of these

22 athletes, but the purpose of the study was not to do a

23 population-wide, you know, sampling of -- of height,

24 body mass and oxygen consumption; right?

25 A Yes, that is correct. 03:52:22

1 Q Okay. So -- so what you just said before,  
2 when we were talking about the -- the cohorts of trans  
3 women, you had said, well, the purpose of those studies  
4 was not to provide population sampling on, you know,  
5 the physiological characteristics of -- of the trans 03:52:43  
6 women in the study; therefore, you couldn't extrapolate  
7 that as a general matter, all trans women were likely  
8 to have similar characteristics.

9 Is that -- is that a fair summary of what you  
10 had just said? 03:52:59

11 MR. FRAMPTON: Object to the form.

12 THE WITNESS: Yes, that is a fair summary.

13 BY MR. BLOCK:

14 Q But in your description of your study here, do  
15 you think a reader, reading that sentence, would think 03:53:10  
16 that you are making the statement that as a general  
17 matter, on a population-wide basis, you found in your  
18 study that height, body mass and max -- maximal oxygen  
19 consumption were higher for the male NCAA competitors  
20 compared to female NCAA competitors? 03:53:32

21 MR. FRAMPTON: Object to the form.

22 THE WITNESS: I'm kind of unclear with what  
23 you're trying to ask.

24 BY MR. BLOCK:

25 Q Yeah, so I'm saying that this happened to be 03:53:45

1 the data for a particular cohort that you're doing a  
2 different study on; correct?

3 MR. FRAMPTON: Object to the form.

4 THE WITNESS: So, yes, as I've stated, this is  
5 a group of male and female Division II distance 03:53:57  
6 runners.

7 BY MR. BLOCK:

8 Q Okay. And so that study wouldn't allow you to  
9 draw any conclusions generalizable to other males and  
10 females about, you know, what their comparative height, 03:54:10  
11 body mass and oxygen consumption would be; right?

12 MR. FRAMPTON: Same objection.

13 THE WITNESS: I don't think I've ever  
14 purported that that was the purpose of this study.

15 BY MR. BLOCK: 03:54:24

16 Q You don't think that someone reading that  
17 sentence, where it says the study -- a study finding  
18 these things, you don't think someone reading that  
19 sentence would have the impression that that was the  
20 purpose of the study? 03:54:40

21 MR. FRAMPTON: Object to the form.

22 THE WITNESS: Those were findings of the  
23 study. That's what I have states, is those are  
24 findings of the study.

25 ///

1 BY MR. BLOCK:

2 Q Was the rest of the -- is the rest of the  
3 study relevant to the topic of this case?

4 A You mean is that the male athletes were faster  
5 than the female athletes? 03:55:10

6 Q I mean -- what -- what I mean is you -- you --  
7 you select this finding from the study, but were any  
8 other findings from that study relevant to this case?

9 A Yes, we could say that. For the same heart  
10 rate, the men were faster than the women. 03:55:32

11 Q Okay. Okay. Let's go to -- to page 4.

12 A On my declaration?

13 Q Yeah. Or your report.

14 A Yeah, just make sure we're on the same -- so  
15 this is the overview? 03:55:54

16 Q Yes. And I just want to direct your attention  
17 to the three bullet points that you've listed there.

18 Do you see them?

19 A Yes, I do.

20 Q Okay. Are you offering any expert opinions in 03:56:11  
21 this case other than the opinions contained in those  
22 three bullet points?

23 MR. FRAMPTON: Object to the form.

24 THE WITNESS: Well, I -- I mean, those are the  
25 basis for everything else, those three bullet points, 03:56:35

Page 274

1 and most of the other information is trying to support  
2 and substantiate why I drew those conclusions.

3 BY MR. BLOCK:

4 Q Okay. So -- but there are no -- I appreciate  
5 that.

03:56:48

6 There's -- you're not offering an opinions on  
7 any other issue, are you?

8 MR. FRAMPTON: Object to the form.

9 THE WITNESS: Kind of unclear what you're  
10 asking.

03:57:07

11 I think it states there fairly clearly what  
12 I'm -- the -- the statements I'm trying to make.

13 BY MR. BLOCK:

14 Q Yeah, I'm just trying to nail down the full  
15 scope of the expert opinions you're offering here. And  
16 so you're not offering any expert opinions on the  
17 appropriateness of particular modes of healthcare for  
18 trans people; is that right?

03:57:24

19 A That is correct, I'm not offering an opinion  
20 on healthcare for transgender individuals.

03:57:45

21 Q Okay. And you are not -- you discuss these  
22 bullet points, what you say are advantages, but you are  
23 not offering an opinions on whether particular policies  
24 are fair or unfair in light of the data that you  
25 present here, are you?

03:58:08

Page 275

1 MR. FRAMPTON: Object to the form and scope.

2 Go ahead.

3 THE WITNESS: So I think this comes back to

4 our previous discussion where we discuss the

5 irreconcilable differences between inclusion and 03:58:21

6 fairness.

7 BY MR. BLOCK:

8 Q Yes, it does, which is why I'm coming back to

9 it.

10 So I -- I -- you know, I understand that, you 03:58:37

11 know, you have laid out your criteria, your -- excuse

12 me -- your credentials for proving -- for providing an

13 expert opinion on whether an advantage exists, and so

14 I -- I -- I just want to find out whether or not, you

15 know, the -- in light of that information you present 03:58:58

16 regarding the existence or nonexistence of an

17 advantage, whether a particular policy maker will then

18 decide that something is fair or unfair, is not -- is

19 not something that you are providing an expert opinion

20 on; right? 03:59:18

21 MR. FRAMPTON: Same objection.

22 Go ahead.

23 THE WITNESS: So I'm trying to detail the

24 advantages, the differences between males and females

25 biologically, documenting the advantages in athletic 03:59:30

1 performance the males have over female, documenting  
2 what we know regarding transgender individuals and  
3 their -- the treatments that they might receive and how  
4 that would affect athletic advantages, and then  
5 bringing up the point that there is, apparently, some 03:59:47  
6 irreconcilable differences -- I'm not sure if that's  
7 the best way to state it, but I state it in the  
8 document -- between goals of inclusion and fairness.

9 BY MR. BLOCK:

10 Q Yeah, I guess -- someone reading your 04:00:00  
11 report -- you know, let's say someone reads all the  
12 information in the report, absorbs all the facts, you  
13 know, and then, you know, is asked, based on all the  
14 facts presented in your report, is it fair to include  
15 trans girls and women or not to include them, would you 04:00:21  
16 have any greater expertise in answering that ultimate  
17 question than anyone else who has absorbed the facts  
18 you presented in your report?

19 MR. FRAMPTON: Object to the form.

20 THE WITNESS: Are you saying does every piece 04:00:46  
21 of knowledge I've ever written put on -- on this  
22 document and someone would know everything that I know?

23 BY MR. BLOCK:

24 Q No. I'm saying that based on these facts, you  
25 know, someone needs to draw a conclusion about what's 04:01:02



1 fair, okay? And so my question is -- you know, I  
2 understand that you're providing an expert -- you know,  
3 opinions on the -- the -- the -- the facts you say in  
4 your report. All my question is that, you know, the  
5 second step of drawing a conclusion about what's fair 04:01:18  
6 or unfair is not something that you are an expert on;  
7 right?

8 MR. FRAMPTON: Object to the form.

9 Go ahead.

10 THE WITNESS: I would hope that someone would 04:01:33  
11 read my document, and they're also going to read the  
12 document from the other experts, weigh the evidence and  
13 make a decision on what is -- what is fair.

14 BY MR. BLOCK:

15 Q And -- and you are not offering, you know, 04:01:52  
16 that decision, that ultimate decision, as part of your  
17 expert report; right? That's for someone else to  
18 decide?

19 MR. FRAMPTON: Object to the form.

20 THE WITNESS: Yes, that is my intention, is 04:02:16  
21 that someone else will weigh the information, weigh the  
22 data and make their decision.

23 MR. BLOCK: All right. Thank you, Dr. Brown.

24 I have no further questions.

25 MR. FRAMPTON: Anyone else? 04:02:37

1 MS. GREEN: This is Roberta Green on behalf of  
2 WVSSAC. No questions.

3 THE VIDEOGRAPHER: Can we go off the record,  
4 Attorney Block?

5 MR. BLOCK: Sure. Unless anyone else wants to 04:02:52  
6 say on the record that they don't have any other  
7 questions.

8 MR. CROPP: This is Jeffrey Cropp with  
9 Harrison County Board of Education and Dora Stutler. I  
10 have no question. 04:02:57

11 MR TAYLOR: Michael Taylor on behalf of the  
12 State BOE and Superintendent Burch. No questions.

13 MR. TRYON: Dave Tryon. No questions.

14 MR. FRAMPTON: Hal Frampton for the  
15 intervenor. No questions.

16 It sounds like we're done.

17 MR. BLOCK: See you in another two years,  
18 Dr. Brown.

19 (Simultaneous speaking.)

20 MS. DUPHILY: Hold on. Let's take this off 04:03:24  
21 the record. One second.

22 THE VIDEOGRAPHER: We are off the record at  
23 4:03 p.m., and this concludes today's testimony given  
24 by Gregory Brown.

25 The total number of media used was eight and 04:03:31

1 will be retained by Veritext Legal Solutions.

2 (TIME NOTED: 4:03 p.m.)

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1 I, GREGORY BROWN, Ph.D., do hereby declare  
2 under penalty of perjury that I have read the foregoing  
3 transcript; that I have made any corrections as appear  
4 noted, in ink, initialed by me, or attached hereto;  
5 that my testimony as contained herein, as corrected, is  
6 true and correct.

7 EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
8 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

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GREGORY BROWN, Ph.D.

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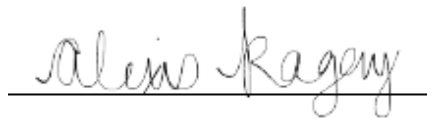
1  
2  
3 I, the undersigned, a Certified Shorthand  
4 Reporter of the State of California, do hereby certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place herein set forth; that  
7 any witnesses in the foregoing proceedings, prior to  
8 testifying, were placed under oath; that a record of  
9 the proceedings was made by me using machine shorthand  
10 which was thereafter transcribed under my direction;  
11 further, that the foregoing is an accurate  
12 transcription thereof.

13 I further certify that I am neither financially  
14 interested in the action nor a relative or employee of  
15 any attorney of any of the parties.

16 IN WITNESS WHEREOF, I have this date subscribed  
17 my name.

18  
19 Dated: April 5, 2022  
20

21   
22

ALEXIS KAGAY

23 CSR NO. 13795  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

B.P.J., by her next friend and mother, HEATHER JACKSON,

*Plaintiff,*

vs.

WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON COUNTY BOARD OF EDUCATION; WEST VIRGINIA SECONDARY SCHOOLS ACTIVITIES COMMISSION; W. CLAYTON BURCH, in his official capacity as State Superintendent, DORA STUTLER, in her official capacity as the Harrison County Superintendent, and the STATE OF WEST VIRGINIA,

*Defendants,*

and

LAINY ARMISTEAD,

*Defendant-Intervenor.*

Case No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**DECLARATION OF DR. CHAD T. CARLSON, M.D., FACSM**

I, Dr. Chad T. Carlson, pursuant to 28 U.S. Code § 1746, declare under penalty of perjury under the laws of the United States of America that the facts contained in my Expert Report of Dr. Chad T. Carlson, M.D., FACM prepared for *B.P.J. v. West Virginia*, attached hereto, are true and correct to the best of my knowledge and belief, and that the opinions expressed therein represent my own expert opinions.

Executed on February 23, 2022.

A handwritten signature in blue ink, appearing to read "Chad T. Carlson", with a horizontal line underneath it.

Chad T. Carlson, MD



**Expert Report of Dr. Chad Thomas Carlson, M.D., FACM  
prepared for *B.P.J. v. West Virginia*  
February 23, 2022**



TABLE OF CONTENTS

Table of Contents ..... iv

Introduction..... 1

Credentials ..... 5

I. OVERVIEW ..... 8

II. A BRIEF HISTORY OF THE RATIONALE FOR SEPARATION OF SPORT BY SEX..... 10

III. UNDERSTANDING THE CAUSES OF SPORTS INJURIES ..... 13

    A. The epidemiological model of injury .....13

    B. The biomechanical model of injury .....18

IV. THE PHYSICS OF SPORTS INJURY..... 20

V. GENDER DIFFERENCES RELEVANT TO INJURY ..... 24

    A. Height and weight .....25

    B. Bone and connective tissue strength .....26

    C. Speed .....27

    D. Strength/Power .....27

    E. Throwing and kicking speed .....30

VI. ENHANCED FEMALE VULNERABILITY TO CERTAIN INJURIES..... 33

    A. Concussions.....35

    B. Anterior Cruciate Ligament injuries .....42

VII. TESTOSTERONE SUPPRESSION WILL NOT PREVENT THE HARM TO FEMALE SAFETY IN ATHLETICS ..... 46

    A. Size and weight.....51

    B. Bone density.....52

    C. Strength .....52

    D. Speed .....55

Conclusion ..... 56

Bibliography ..... 61

Appendix – List of Publications ..... 71

Curriculum Vitae (Abbreviated) ..... 72

## INTRODUCTION

Up to the present, the great majority of news, debate, and even scholarship about transgender participation in female athletics has focused on track and field events and athletes, and the debate has largely concerned questions of fairness and inclusion. However, the transgender eligibility policies of many high school athletic associations in the United States apply with equal force to all sports, including sports in which players frequently collide with each other, or can be forcefully struck by balls or equipment such as hockey or lacrosse sticks. And in fact, biologically male transgender athletes have competed in a wide range of high school, collegiate, and professional girls' or women's sports, including, at least, basketball,<sup>1</sup> soccer,<sup>2</sup> volleyball,<sup>3</sup> softball,<sup>4</sup> lacrosse,<sup>5</sup> and even women's tackle football.<sup>6</sup>

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<sup>1</sup>[https://www.espn.com/espnw/athletes-life/story/\\_/id/10170842/espnw-gabrielle-ludwig-52-year-old-transgender-women-college-basketball-player-enjoying-best-year-life](https://www.espn.com/espnw/athletes-life/story/_/id/10170842/espnw-gabrielle-ludwig-52-year-old-transgender-women-college-basketball-player-enjoying-best-year-life) (accessed 2/17/22)

<sup>2</sup>[https://www.unionleader.com/news/education/nh-bill-limits-women-s-sports-to-girls-born-female/article\\_d1998ea1-a1b9-5ba4-a48d-51a2aa01b910.html](https://www.unionleader.com/news/education/nh-bill-limits-women-s-sports-to-girls-born-female/article_d1998ea1-a1b9-5ba4-a48d-51a2aa01b910.html);  
<https://www.outsports.com/2020/1/17/21069390/womens-soccer-mara-gomez-transgender-player-argentina-primera-division-villa-san-marcos> (accessed 6/20/21)

<sup>3</sup><https://news.ucsc.edu/2016/09/challenging-assumptions.html> (accessed 6/20/21);  
<https://www.outsports.com/2017/3/20/14987924/trans-athlete-volleyball-tia-thompson> (accessed 6/20/21)

<sup>4</sup><https://www.foxnews.com/us/californias-transgender-law-allows-male-high-schooler-to-make-girls-softball-team> (accessed 6/20/21)

<sup>5</sup><https://savewomenssports.com/f/emilys-story?blogcategory=Our+Stories> (accessed 6/20/21)

<sup>6</sup><https://www.outsports.com/2017/12/13/16748322/britney-stinson-trans-football-baseball> (accessed 6/20/21); <https://www.mprnews.org/story/2018/12/22/transgender-football-player-prevails-in-lawsuit> (accessed 6/20/21)

The science of sex-specific differences in physiology, intersecting with the physics of sports injury, leaves little doubt that participation by biological males in these types of girls' or women's sports, based on gender identity, creates significant additional risk of injury for the biologically female participants competing alongside these transgender athletes.

In 2020, after an extensive review of the scientific literature, consultation with experts, and modeling of expected injuries, World Rugby published revised rules governing transgender participation, along with a detailed explanation of how the new policy was supported by current evidence. World Rugby concluded that "there is currently no basis with which safety and fairness can be assured to biologically female rugby players should they encounter contact situations with players whose biological male advantages persist to a large degree," and that after puberty, "the lowering of testosterone removes only a small proportion of the documented biological differences." Hence, World Rugby concluded that biological men should not compete in women's rugby. (World Rugby Transgender Women Guidelines 2020.) World Rugby has been criticized by some for its new guidelines, but those criticisms have often avoided discussions of medical science entirely, or have asserted that modeling scenarios can overstate true risk. What cannot be denied, however, is that World Rugby's approach is evidence-based, and rooted in concern for athlete safety. As a medical doctor who has spent my career in sports medicine, it is my opinion that World Rugby's assessment of the evidence is scientifically sound, and that injury modeling

meaningfully predicts that biologically male transgender athletes do constitute a safety risk for the biologically female athlete in women's sports.

In a similar vein, in 2021, the UK Sports Councils' Equality Group released new guidance for transgender inclusion in organized sports. This guidance was formulated after extensive conversations with stakeholders, a review of scientific findings related to transgender athletes in sport through early 2021, and an assessment of the use by some sport national governing bodies of case-by-case assessment to determine eligibility. Noteworthy within these stakeholder consultations was a lack of consensus on any workable solution, as well as concerns related to athlete safety and "adherence to rules which give sport validity." The Literature Review accompanying the guidance document further noted that "[t]here are significant differences between the sexes which render direct competition between males and females . . . unsafe in sports which allow physical contact and collisions." (UK Sports Councils' Equality Group Literature Review 2021 at 1.) Their review of the science "made clear that there are retained differences in strength, stamina and physique between the average woman compared with the average transgender woman....with or without testosterone suppression." (UK Sports Councils' Equality Group Guidance at 3.) This was also reflected in their ten guiding principles, stating that physical differences between the sexes will "impact safety parameters in sports which are combat, collision or contact in nature." (UK Sports Councils' Equality Group Guidance 2021 at 7.) Ultimately, UK Sport

concluded that the full inclusion of transgender athletes in women's sports "cannot be reconciled within the current structure of sport," stating that "the inclusion of transgender people into female sport cannot be balanced regarding transgender inclusion, fairness and safety in gender-affected sport where there is meaningful competition . . . . due to retained differences in strength, stamina and physique between the average woman compared with the average transgender woman..., with or without testosterone suppression." (UK Sports Councils' Equality Group Guidance 2021 at 6.) Finally, UK Sport affirmed the use of sex categorization in sport, along with age and disability, as important for the maintenance of safety and fairness. (UK Sports Councils' Equality Group Guidance 2021 at 7-8.)

Unfortunately, apart from World Rugby's careful review and the recent release of UK Sports Councils' guidance, the public discourse is lacking any careful consideration of the question of safety. As a physician who has spent my career caring for athletes, I find this silence about safety both surprising and concerning. It is my hope through this white paper to equip and motivate sports leagues and policy makers to give adequate attention to the issue of safety for female athletes when transgender policies are being considered. I first explain the nature and causes of common sports injuries. I then review physiological differences between male and female bodies that affect the risk and severity of injuries to females when biological males compete in the female category, and

explain why testosterone suppression does not eliminate these heightened risks to females. Finally, I explain certain conclusions about those risks.

### **CREDENTIALS**

1. I am a medical doctor practicing Sports Medicine, maintaining an active clinical practice at Stadia Sports Medicine in West Des Moines, Iowa. I received my M.D. from the University of Nebraska College of Medicine in 1994 and completed a residency in family medicine at the University of Michigan in 1997.

2. Following my time in Ann Arbor, I matched to a fellowship in Sports Medicine at Ball Memorial Hospital in Muncie, Indiana, training from 1997 to 1999, with clinical time split between Central Indiana Orthopedics, the Ball State Human Performance Laboratory, and the Ball State University training room. I received my board certification in Sports Medicine in 1999, which I continue to hold. Since residency training, my practice has focused on Sports Medicine—the treatment and prevention of injuries related to sport and physical activity.

3. Since 1997, I have served in several clinical practices and settings as a treating physician, including time as team physician for both the University of Illinois and Ball State University, where I provided care to athletes in several sports, including football, ice hockey, basketball, field hockey, softball, gymnastics, soccer, and volleyball. In the course of my career, I have provided coverage for NCAA Power Five Conference championships and NCAA National

Championship events in basketball, field hockey and gymnastics, among other sports, as well as provided coverage for national championship events for U.S.A. gymnastics, and U.S. Swimming and Diving. I have also covered professional soccer in Des Moines.

4. Since 2006, I have been the physician owner of Stadia Sports Medicine in West Des Moines, Iowa. My practice focuses on treatment of sports and activity-related injury, including concussive injury, as well as problems related to the physiology of sport.

5. I have served in and provided leadership for several professional organizations over the course of my career. In 2004, I was designated a Fellow of the American College of Sports Medicine (ACSM). I have served on ACSM's Health and Science Policy Committee since 2010, and for a time chaired their Clinical Medicine Subcommittee. From 2009 to 2013, I served two elected terms on the Board of Directors of the American Medical Society for Sports Medicine (AMSSM), and during that time served as Chair of that body's Practice and Policy Committee. I was subsequently elected to a four-year term on AMSSM's executive committee in 2017, and from 2019-20, I served as AMSSM's President. AMSSM is the largest organization of sports medicine physicians in the world. I gained fellowship status through AMSSM in 2020—my first year of eligibility. My work for ACSM and AMSSM has brought with it extensive experience in public policy as relates to Sports Medicine.

6. In 2020, I was named as AMSSM's first board delegate to the newly-constituted Physical Activity Alliance. I am a named member of an NCAA advisory group on COVID-19, through which I provided input regarding the cancellation of the basketball tournament in 2020. I also serve as a member of the Iowa Medical Society's Sports Medicine Subcommittee and have been asked to serve on the Iowa High School Athletic Association's newly-forming Sports Medicine Advisory Committee.

7. I have served as a manuscript reviewer for organizational policy pronouncements, and for several professional publications, most recently a sports medicine board review book just published in 2021. I have published several articles on topics related to musculoskeletal injuries in sports and rehabilitation, which have been published in peer-reviewed journals such as Clinical Journal of Sports Medicine, British Journal of Sports Medicine, Current Reviews in Musculoskeletal Medicine, Athletic Therapy Today, and the Journal of Athletic Training. In conjunction with my work in policy advocacy, I have helped write several pieces of legislation, including the initial draft of what became the Sports Medicine Licensure Clarity Act, signed into law by President Trump in 2018, which eases the restrictions on certain practitioners to provide health services to athletes and athletic teams outside of the practitioner's home state. A list of my publications over the past ten (10) years is included as an appendix to this report.



8. In the past four years, I have not testified as an expert witness in a deposition or at trial.

9. I am being compensated for my services as an expert witness in this case at the rates of \$650 per hour for consultation, \$800 per hour for deposition testimony, and \$3,500 per half-day of trial testimony.

## **I. OVERVIEW**

10. In this statement, I offer information and my own professional opinion on the potential for increased injury risk to females in sports when they compete against biologically male transgender athletes.<sup>7</sup> At many points in this statement, I provide citations to published, peer-reviewed articles that provide relevant and supporting information to the points I make.

11. The principal conclusions that I set out in this white paper are as follows:

a. Government and sporting organizations have historically considered the preservation of athlete safety as one component of competitive equity.

b. Injury in sport is somewhat predictable based on modeling assumptions that take into account relevant internal and external risk factors.

---

<sup>7</sup> In the body of this paper, I use the terms “male” and “female” according to their ordinary medical meaning—that is to say, to refer to the two biological sexes. I also use the word “man” to refer to a biologically male human, and “woman” to refer to a biologically female human. In the context of this opinion, I include in these categories non-syndromic, biologically-normal males and females who identify as a member of the opposite sex, including those who use endogenous hormone suppression to alter their body habitus. In contexts that are not focused on questions of biology and physiology, terms of gender are sometimes used to refer to subjective identities rather than to biological categories – something I avoid for purposes of a paper focused on sports science

c. Males exhibit large average advantages in size, weight, and physical capacity over females—often falling far outside female ranges. Even before puberty, males have a performance advantage over females in most athletic events. Failure to preserve protected female-only categories in contact sports (broadly defined) will ultimately increase both the frequency and severity of injury suffered by female athletes who share playing space with these males.

d. Current research supports the conclusion that suppression of testosterone levels by males who have already begun puberty will not fully reverse the effects of testosterone on skeletal size, strength, or muscle hypertrophy, leading to persistence of sex-based differences in power, speed, and force-generating capacity.

12. In this white paper, I use the term “contact sports” to refer broadly to all sports in which collisions between players, or collisions between equipment such as a stick or ball and the body of a player, occur with some frequency (whether or not permitted by the rules of the game), and are well recognized in the field of sports medicine as causes of sport-related injuries.<sup>8</sup> The 1975 Title IX implementing regulations (34 CFR § 106.41) say that “for purposes of this [regulation] contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, *and other sports* the purpose or major activity of which involves bodily contact.” Certainly, all of the sports specifically named in the regulation fall within my definition of “contact sport.” Mixed martial arts, field hockey (Barboza 2018), soccer (Kuczinski 2018), rugby (Viviers 2018), lacrosse

---

<sup>8</sup> It is common to see, within the medical literature, reference to distinctions between “contact” and “collision” sports. For purposes of clarity, I have combined these terms, since in the context of injury risk modeling, there is no practical distinction between them.

(Pierpoint 2019), volleyball,<sup>9</sup> baseball, and softball also involve collisions that can and do result in injuries, and so also fall within my definition.

## **II. A BRIEF HISTORY OF THE RATIONALE FOR SEPARATION OF SPORT BY SEX**

13. World Rugby is correct when it notes that “the women’s category exists to ensure protection, safety, and equality” for women. (World Rugby Transgender Women Guidelines 2020.) To some extent, those in charge of sport governing bodies in the modern era have always recognized the importance of grouping athletes together based on physical attributes, in order to ensure both safety and competitive balance. Weight classifications have existed in wrestling since it reappeared as an Olympic event in 1904. Women and men have participated in separate categories since the advent of intercollegiate sporting clubs early in the 20<sup>th</sup> century. When Title IX went into effect in 1975, there were just under 300,000 female high school athletes, and fewer than 10,000 female collegiate athletes. With the changes that resulted from Title IX, it was assumed that newly-available funds for women in sport would ensure the maintenance of existing, or creation of new, sex-segregated athletic teams that would foster greater participation by women. This has been borne out subsequently; by the first half of the 1980’s these numbers had risen to 1.9 million and nearly 100,000 respectively. (Hult 1989.)

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<sup>9</sup> See <https://www.latimes.com/sports/story/2020-12-08/stanford-volleyball-hayley-hodson-concussions-cte-lawsuit>, and <https://volleyballmag.com/corinneatchison/> (both accessed 6/20/21).

14. The rationale for ongoing “separate but equal” status when it came to sex-segregated sports was made clear within the language of the original implementing regulations of Title IX , which, acknowledging real, biologically-driven differences between the sexes, created carve-out exceptions authorizing sex-separation of sport for reasons rooted in the maintenance of competitive equity. Importantly, the effect of these innate sex-based differences on the health and safety of the athlete were acknowledged by the express authorization of sex-separated teams for sports with higher perceived injury risk—i.e., “contact sports.” (Coleman 2020.)

15. In the almost half century since those regulations were adopted, the persistent reality of sex-determined differences in athletic performance and safety has been recognized by the ongoing and nearly universal segregation of men’s and women’s teams—even those that are not classically defined as being part of a contact or collision sport.

16. Now, however, many schools and sports leagues in this country are permitting males to compete in female athletics—including in contact sports—based on gender identity. In my view, these policies have been adopted without careful analysis of safety implications. Other researchers and clinicians have addressed questions of the negative impact of such policies on fairness, or equality of athletic experiences for girls and women, in published articles, and in court submissions. One recent review of track and field performances, including sprints, distance races and field events, noted that men surpass the

top female performance in each category between 1000 and 10,000 times *each year*, with hundreds or thousands of men beating the top women in each event. (Coleman & Shreve.) Although this was not their primary focus, World Rugby well-summarized the point when it observed that in a ranking list of the top thousand performances in most sports, every year, *every one* will have been achieved by a biological male. (World Rugby Transgender Women Guidelines 2020.) Although most easily documented in athletes who have gone through puberty, these differences are not exclusively limited to post-pubescent athletes either.

17. I have reviewed the expert declaration of Gregory A. Brown, Ph.D., FACM of February 23, 2022, provided in this case, which includes evidence from a wide variety of sources, including population-based mass testing data, as well as age-stratified competition results, all of which support the idea that prepubertal males run faster, jump higher and farther, exhibit higher aerobic power output, and have greater upper body strength (evidenced by stronger hand grip and better performance with chin-ups or bent arm hang) than comparably aged females. This performance gap is well-documented in population-based physiologic testing data that exists in databases such as the Presidential Fitness Test, the Eurofit Fitness test, and additional mass testing data from the UK and Australia. Collectively, this data reveals that pre-pubertal males outperform comparably aged females in a wide array of athletic tests including but not limited to the countermovement jump test, drop jump test, change of direction

test, long jump, timed sit-up test, the 10 X 5 meter shuttle run test, the 20 meter shuttle run test, curl-ups, pull-ups, push-ups, one mile run, standing broad jump, and bent arm hang test. Dr. Brown further references studies showing a significant difference in the body composition of males and females before puberty. In sum, a large and unbridgeable performance gap between the sexes is well-studied and equally well-documented, beginning in many cases before puberty. In this white paper, I focus on some of these differences as they touch on the question of athlete safety.

### **III. UNDERSTANDING THE CAUSES OF SPORTS INJURIES**

18. The causes for injury in sport are multifactorial. In recent decades, medical researchers have provided us an evolving understanding of how sports injuries occur, as well as the factors that make them more or less probable, and more or less severe. Broadly speaking, there are two ways of modeling injury: the epidemiological model, and the biomechanical model. These models are not mutually exclusive, but provide complementary conceptual frameworks to help us stratify risk in sport.

#### **A. The epidemiological model of injury**

19. From a practical standpoint, sports medicine researchers and clinicians often use the “epidemiological model” to explain, prevent and manage sports injuries. Broadly speaking, this model views an injury in sport as the product of internal and external risk factors, triggered by an inciting event. In other words, a given injury is “caused” by a number of different factors that are

unique to a given situation. (Meeuwise 1994.) When the interplay of these factors exceeds the injury threshold, injury occurs. One example of how this interplay might work would be a female distance runner in track who develops a tibial stress fracture, with identified risks of low estrogen state from amenorrhea (suppression of menses), an aggressive winter training program on an indoor tile surface, and shoes that have been used for too many miles, and are no longer providing proper shock absorption. Most risk factors ebb and flow, with the overall injury risk at any given time fluctuating as well. Proper attention to risk factor reduction *before* the start of the sports season (including appropriate rule-making) is the best way to reduce actual injury rates *during* the season.

20. As alluded to, the risk factors associated with injury can be broadly categorized as internal or external. Internal risk factors are internal to the athlete. These include relatively fixed variables, such as the athlete's age, biological sex, bone mineral density (which affects bone strength) and joint laxity, as well as more mutable variables such as body weight, fitness level, hydration state, current illness, prior injury, or psychosocial factors such as aggression.

21. External risk factors are, as the name suggests, external to the athlete. These include non-human risks such as the condition of the playing surface or equipment, athletic shoe wear, or environmental conditions. Other external risk factors come from opposing competitors, and include such

variables as player size, speed, aggressiveness, and overall adherence to the rules of the game. As already mentioned, these risks can be minimized through the proper creation and enforcement of rules, as well as the appropriate grouping of athletes together for purposes of competition. To the latter point, children don't play contact sports with adults and, in the great majority of cases, men and women compete in categories specific to their own biological sex. Certainly these categorical separations are motivated in part by average performance differences and considerations of fairness and opportunity. But they are also motivated by safety concerns. When properly applied, these divisions enhance safety because, when it comes to physical traits such as body size, weight, speed, muscle girth, and bone strength, although a certain amount of variability exists within each group, the averages and medians differ widely *between* the separated groups.<sup>10</sup>

22. Thus, each of these commonly utilized groupings of athletes represents a pool of individuals with predictable commonalities. Epidemiological risk assessment is somewhat predictable and translatable as long as these pools remain intact. But the introduction of outside individuals

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<sup>10</sup> In some cases, safety requires even further division or exclusion. A welterweight boxer would not compete against a heavyweight, nor a heavyweight wrestle against a smaller athlete. In the case of youth sports, when children are at an age where growth rates can vary widely, leagues will accommodate for naturally-occurring large discrepancies in body size by limiting larger athletes from playing positions where their size and strength is likely to result in injury to smaller players. Thus, in youth football, players exceeding a certain weight threshold may be temporarily restricted to playing on the line and disallowed from carrying the ball, or playing in the defensive secondary, where they could impose high-velocity hits on smaller players.



into a given pool (e.g. an adult onto a youth football team, or males into most women's sports) would change the balance of risk inside that pool. Simply put, when you introduce larger, faster, and stronger athletes from one pool into a second pool of athletes who are *categorically* smaller (whether as a result of age or sex), you have altered the characteristics of the second pool, and, based on known injury modeling, have statistically increased the injury risk for the original athletes in that pool. This, in a nutshell, is the basis for World Rugby's recommendations.

23. Most clinical studies of the epidemiology of sports injuries use a multivariate approach, identifying multiple independent risk factors and examining how these factors might interact, in order to determine their relative contribution to injury risk, and make educated inferences about causation. (Meeuwise 1994.)

24. In applying the multivariate approach, the goal is to keep as many variables as possible the same so as to isolate the potential effect of a single variable (such as age or biological sex) on injury risk, as well as to determine how the isolated variable interacts with the other analyzed variables to affect injury risk. Failure to consider relevant independent variables can lead to error. Researchers focusing on differences between male and female athletes, for example, would not compare concussion rates of a high school girls' soccer team to concussion rates of a professional men's soccer team, because differences in the concussion rate might be due to a number of factors besides sex, such as age,

body mass, relative differences in skill, speed, or power, as well as differences in training volume and intensity.

25. As indicated earlier, an injury event is usually the end product of a number of different risk factors coming together. (Bahr 2005.) A collision between two soccer players who both attempt to head the ball, for example, might be the inciting event that causes a concussion. Although the linear and angular forces that occur through sudden deceleration would be the proximate cause of this injury, the epidemiological model of injury would also factor in “upstream” risks, predicting the possibility of an injury outcome for each athlete differently depending on the sum of these risks. If the collision injury described above occurs between two disparately-sized players, the smaller athlete will tend to decelerate more abruptly than the larger athlete, increasing the smaller athlete’s risk for injury. Additional discrepancies in factors such as neck strength, running speeds, and muscle force generation capacity all result in differing risks and thus, the potential for differing injury outcomes from the same collision. As I discuss later in this white paper, there are significant statistical differences between the sexes when it comes to each of these variables, meaning that in a collision sport where skeletally mature males and females are playing against one another, there is a higher statistical likelihood that injury will result when collisions occur, and in particular there is a higher likelihood that a female will suffer injury. This again is the basis for the recent decision by World Rugby to disallow the crossover of men into women’s rugby,

regardless of gender identity. (World Rugby Transgender Women Guidelines 2020.) The decision-making represented by this policy change is rational and rooted in objective facts and objective risks of harm, because it takes real, acknowledged, and documented physical differences between the sexes (in many cases before adolescence), and models expected injury risk on the basis of the known differences that persist even after hormone manipulation.

**B. The biomechanical model of injury**

26. Sports medicine researchers and clinicians also consider a biomechanical approach when it comes to understanding sports injuries. In the biomechanical model of injury, injury is considered to be analogous to the failure of a machine or other structure. Every bone, muscle, or connective tissue structure in an athlete's body has a certain load tolerance. Conceptually, when an external "load" exceeds the load tolerance of a given structure in the human body, an injury occurs. (Fung 1993 at 1.) Thus, researchers focus on the mechanical load—the force exerted on a bone, ligament, joint or other body part—and the load tolerance of that impacted or stressed body part, to understand what the typical threshold for injury is, and how predictable this might be. (McIntosh 2005 at 2-3.) Biomechanical models of injury usually consider forces in isolation. The more consistent the movement pattern of an individual, and the fewer the contributions of unexpected outside forces to the athlete, the more accurate biomechanical predictions of injury will be.

27. Biomechanical modeling can be highly predictive in relatively simple settings. For example, in blunt trauma injury from falls, mortality predictably rises the greater the fall. About 50% of people who fall four stories will survive, while only 10% will survive a fall of seven stories. (Buckman 1991.) As complexity increases, predictability in turn decreases. In sport, the pitching motion is highly reproducible, and strain injury to the ulnar collateral ligament (UCL) of the elbow can be modeled. The load tolerance of the UCL of a pitcher's elbow is about 32 Newton-meters, but the failure threshold of a ligament like this in isolation is not the only determinant of whether injury will occur. During the pitching motion, the valgus force imparted to the elbow (gapping stress across the inner elbow that stretches the UCL) routinely reaches 64 Newtons, which is obviously greater than the failure threshold of the ligament. Since not all pitchers tear their UCLs, other variables innate to an athlete must mitigate force transmission to the ligament and reduce risk. The load tolerance of any particular part of an athlete's body is thus determined by other internal factors such as joint stiffness, total ligament support, muscle strength across the joint, or bone mineral density. Injury load can be self-generated, as in the case of a pitcher's elbow, or externally-generated, as in the case of a linebacker hitting a wide receiver. While load tolerance will vary by individual, as described above, and is often reliant on characteristics innate to a given athlete, external load is determined by outside factors such as the nature of the playing surface or

equipment used, in combination with the weight and speed of other players or objects (such as a batted ball) with which the player collides. (Bahr 2005.)

28. As this suggests, the two “models” of sports injuries described above are not in any sense inconsistent or in tension with each other. Instead, they are complementary ways of thinking about injuries that can provide different insights. But the important point to make regarding these models is that in either model, injury risk (or the threshold for injury) rises and falls depending on the size of an externally-applied force, and the ability of a given athlete to absorb or mitigate that force.

#### **IV. THE PHYSICS OF SPORTS INJURY**

29. Sports injuries often result from collisions between players, or between a player and a rapidly moving object (e.g. a ball or hockey puck, a lacrosse or hockey stick). In soccer, for example, most head injuries result from collisions with another player’s head or body, collision with the goal or ground, or from an unanticipated blow from a kicked ball. (Boden 1998; Mooney 2020.) In basketball, players often collide with each other during screens, while diving for a loose ball, or while driving to the basket. In lacrosse or field hockey, player-to-player, or player-to-stick contact is common.

30. But what are the results of those collisions on the human body? Basic principles of physics can cast light on this question from more than one angle. A general understanding of these principles can help us identify factors

that will predictably increase the relative risk, frequency, and severity of sports injuries, given certain assumptions.

31. First, we can consider **energy**. Every collision involves an object or objects that possess energy. The energy embodied in a moving object (whether a human body, a ball, or anything else) is called kinetic energy.

32. Importantly, the kinetic energy of a moving object is expressed as:  $E_k = \frac{1}{2}mv^2$ . That is, kinetic energy is a function of the mass of the object multiplied by the *square* of its velocity. (Dashnaw 2012.) To illustrate with a simple but extreme example: if athletes A and B are moving at the same speed, but athlete A is twice as heavy, athlete A carries twice as much kinetic energy as athlete B. If the two athletes weigh the same amount, but athlete A is going twice as fast, athlete A carries four times as much kinetic energy as athlete B. But as I have noted, the kinetic energy of a moving object is a function of the mass of the object multiplied by the square of its velocity. Thus, if athlete A is twice as heavy, and moving twice as fast, athlete A will carry eight times the kinetic energy of athlete B into a collision.<sup>11</sup>

33. The implication of this equation means that what appear to be relatively minor discrepancies in size and speed can result in major differences in energy imparted in a collision, to the point that more frequent and more severe injuries can occur. To use figures that correspond more closely to average

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<sup>11</sup>  $2 \times 2^2 = 8$

differences between men and women, if Player M weighs only 20% more than Player F, and runs only 15% faster, Player M will bring *58% more kinetic energy* into a collision than Player F.<sup>12</sup>

34. The law of conservation of energy tells us that energy is never destroyed or “used up.” If kinetic energy is “lost” by one body in a collision, it is inevitably transferred to another body, or into a different form. In the case of collision between players, or between (e.g.) a ball and a player’s head, some of the energy “lost” by one player, or by the ball, may be transformed into (harmless) sound; some may result in an increase in the kinetic energy of the player who is struck (through acceleration, which I discuss below); but some of it may result in *deformation* of the player’s body—which, depending on its severity, may result in injury. Thus, the greater the kinetic energy brought into a collision, the greater the potential for injury, all other things being equal.

35. Alternately, we can consider force and *acceleration*, which is particularly relevant to concussion injuries.

36. Newton’s third law of motion tells us that when two players collide, their bodies experience equal and opposite forces at the point of impact.

37. Acceleration refers to the rate of change in speed (or velocity). When two athletes collide, their bodies necessarily accelerate (or decelerate) rapidly: stopping abruptly, bouncing back, or being deflected in a different

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<sup>12</sup>  $1.2 \times (1.15)^2 = 1.587$

direction. Newton's second law of motion tells us that:  $\mathbf{F} = m\mathbf{a}$  (that is, force equals mass multiplied by acceleration). From this equation we see that when a larger and a smaller body collide, and (necessarily) experience equal and opposite forces, the smaller body (or smaller player, in sport) will experience more rapid acceleration. We observe this physical principle in action when we watch a bowling ball strike bowling pins: the heavy bowling ball only slightly changes its course and speed; the lighter pins go flying.

38. This same equation also tells us that if a given player's body or head is hit with a *larger* force (e.g., from a ball that has been thrown or hit faster), it will experience *greater* acceleration, everything else being equal.

39. Of course, sport is by definition somewhat chaotic, and forces are often not purely linear. Many collisions also involve angular velocities, with the production of rotational force, or torque. Torque can be thought of as force that causes rotation around a central point. A different but similar equation of Newtonian physics governs the principles involved.<sup>13</sup> Torque is relevant to injury in several ways. When torque is applied through joints in directions those joints are not able to accommodate, injury can occur. In addition, rotational force can cause different parts of the body to accelerate at different rates—in some cases, very rapid rates, also leading to injury. For example, a collision where the

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<sup>13</sup> In this equation,  $\boldsymbol{\tau} = I\boldsymbol{\alpha}$ , torque equals moment of inertia multiplied by angular acceleration, where "moment of inertia" is defined as  $I = m\mathbf{r}^2$ , that is, mass multiplied by the square of the distance to the rotational axis.



body is impacted at the waist can result in high torque and acceleration on the neck and head.

40. Sport-related concussion—a common sports injury and one with potentially significant effects—is attributable to linear, angular, or rotational acceleration and deceleration forces that result from impact to the head, or from an impact to the body that results in a whiplash “snap” of the head. (Rowson 2016.) In the case of a concussive head injury, it is the brain that accelerates or decelerates on impact, colliding with the inner surface of the skull. (Barth 2001 at 255.)

41. None of this is mysterious: each of us, if we had to choose between being hit either by a large, heavy athlete running at full speed, or by a small, lighter athlete, would intuitively choose collision with the small, light athlete as the lesser of the two evils. And we would be right. One author referred to the “increase in kinetic energy, and therefore imparted forces” resulting from collision with larger, faster players as “profound.” (Dashnaw 2012.)

## **V. GENDER DIFFERENCES RELEVANT TO INJURY**

42. It is important to state up front that it is self-evident to most people familiar with sport and sport injuries that if men and women were to consistently participate together in competitive contact sports, there would be higher rates of injury in women. This is one reason that rule modifications often

exist in leagues where co-ed participation occurs.<sup>14</sup> Understanding the physics of sports injuries helps provide a theoretical framework for why this is true, but so does common sense and experience. All of us are familiar with basic objective physiological differences between the sexes, some of which exist in childhood, and some of which become apparent after the onset of puberty, and persist throughout adulthood. And as a result of personal experience, all of us also have some intuitive sense of what types of collisions are likely to cause pain or injury. Not surprisingly, our “common sense” on these basic facts about the human condition is also consistent with the observations of medical science. Below, I provide quantifications of some of these well-known differences between the sexes that are relevant to injury risk, as well as some categorical differences that may be less well known.

**A. Height and weight**

43. It is an inescapable fact of the human species that males as a group are statistically larger and heavier than females. On average, men are 7% to 8% taller than women. (Handelsman 2018 at 818.) According to the most recently available Centers for Disease Control and Prevention (CDC) statistics, the weight of the average U.S. adult male is 16% greater than that of the average U.S. adult female. (CDC 2018.) This disparity persists into the athletic cohort.

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<sup>14</sup> For example, see <https://www.athleticbusiness.com/college/intramural-coed-basketball-playing-rules-vary-greatly.html> (detailing variety of rule modifications applied in co-ed basketball). Similarly, coed soccer leagues often prohibit so-called “slide tackles,” which are not prohibited in either men’s or women’s soccer. See, e.g., <http://www.premiercoedsports.com/pages/rulesandpolicies/soccer>.

Researchers find that while athletes tend on average to be lighter than non-athletes, the weight difference between the average adult male and female athlete remains within the same range—between 14% and 23%, depending on the sport analyzed. (Santos 2014; Fields 2018.) Indeed, World Rugby estimates that the typical male rugby player weighs 20% to 40% more than the typical female rugby player. (World Rugby Transgender Women Guidelines 2020.) This size advantage by itself allows men to bring more force to bear in a collision.

**B. Bone and connective tissue strength**

44. Men have bones in their arms, legs, feet, and hands that are both larger and stronger per unit volume than those of women, due to greater cross-sectional area, greater bone mineral content, and greater bone density. The advantage in bone size (cross-sectional area) holds true in both upper and lower extremities, even when adjusted for lean body mass. (Handelsman 2018 at 818; Nieves 2005 at 530.) Greater bone size in men is also correlated with stronger tendons that are more adaptable to training (Magnusson 2007), and an increased ability to withstand the forces produced by larger muscles (Morris 2020 at 5). Male bones are not merely larger, they are stronger per unit of volume. Studies of differences in arm and leg bone mineral density – one component of bone strength – find that male bones are denser, with measured advantages of between 5% and 14%. (Gilsanz 2011; Nieves 2005.)

45. Men also have larger ligaments than women (Lin 2019 at 5), and stiffer connective tissue (Hilton 2021 at Table 1), providing greater protection against joint injury.

### **C. Speed**

46. When it comes to acceleration from a static position to a sprint, men are consistently faster than women. World record sprint performance gaps between the sexes remain significant at between 7% and 10.5%, with world record times in women now exhibiting a plateau (no longer rapidly improving with time) similar to the historical trends seen in men. (Cheuvront 2005.) This performance gap has to do with, among other factors, increased skeletal stiffness, greater cross-sectional muscle area, denser muscle fiber composition and greater limb length. (Handelsman 2018.) Collectively, males, on average, run about 10% faster than females. (Lombardo 2018 at 93.) This becomes important as it pertains to injury risk, because males involved in sport will often be travelling at faster speeds than their female counterparts in comparable settings, with resultant faster speed at impact, and thus greater impact force, in a given collision.

### **D. Strength/Power**

47. In 2014, a male mixed-martial art fighter identifying as female and fighting under the name Fallon Fox fought a woman named Tamikka Brents, and caused significant facial injuries in the course of their bout. Speaking about their fight later, Brents said:

“I’ve fought a lot of women and have never felt the strength that I felt in a fight as I did that night. I can’t answer whether it’s because she was born a man or not because I’m not a doctor. I can only say, I’ve never felt so overpowered ever in my life, and I am an abnormally strong female in my own right.”<sup>15</sup>

48. So far as I am aware, mixed martial arts is not a collegiate or high school interscholastic sport. Nevertheless, what Brent experienced in an extreme setting is true and relevant to safety in all sports that involve contact. In absolute terms, males as a group are substantially stronger than women.

49. Compared to women, men have “larger and denser muscle mass, and stiffer connective tissue, with associated capacity to exert greater muscular force more rapidly and efficiently.” (Hilton 2021 at 201.) Research shows that on average, during the prime athletic years (ages 18-29) men have, on average, 54% greater total muscle mass than women (33.7 kg vs. 21.8 kg) including 64% greater muscle mass in the upper body, and 47% greater in the lower body. (Janssen 2000 at Table 1.) The cross-sectional area of muscle in women is only 50% to 60% that of men in the upper arm, and 65% to 70% of that of men in the thigh. This translates to women having only 50% to 60% of men's upper limb strength and 60% to 80% of men's lower limb strength. (Handelsman 2018 at 812.) Male weightlifters have been shown to be approximately 30% stronger than female weightlifters of equivalent stature and mass. (Hilton 2021 at 203.) But in competitive athletics, since the stature and mass of the average male

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<sup>15</sup> <https://bjj-world.com/transgender-mma-fighter-fallon-fox-breaks-skull-of-her-female-opponent/>

exceeds that of the average female, actual differences in strength between average body types will, on average, exceed this. The longer limb lengths of males augment strength as well. Statistically, in comparison with women, men also have lower total body fat, differently distributed, and greater lean muscle mass, which increases their power-to-weight ratios and upper-to-lower limb strength ratios as a group. Looking at another common metric of strength, males average 57% greater grip strength (Bohannon 2019) and 54% greater knee extension torque (Neder 1999). Research shows that sex-based discrepancies in lean muscle mass begin to be established from infancy, and persist through childhood to adolescence. (Davis 2019; Kirchengast 2001; Taylor 1997; Taylor 2010; McManus 2011.)

50. Using their legs and torso for power generation, men can apply substantially larger forces with their arms and upper body, enabling them to generate more ball velocity through overhead motions, as well as to generate more pushing or punching power. In other words, isolated sex-specific differences in muscle strength in one region (even differences that in isolation seem small) can, and do combine to generate even greater sex-specific differences in more complex sport-specific functions. One study looking at moderately-trained individuals found that males can generate 162% more punching power than females. (Morris 2020.) Thus, multiple small advantages aggregate into larger ones.

**E. Throwing and kicking speed**

51. One result of the combined effects of these sex-determined differences in skeletal structure is that men are, on average, able to throw objects faster than women. (Lombardo 2018; Chu 2009; Thomas 1985.) By age seventeen, the *average* male can throw a ball farther than 99% of seventeen-year-old females—which necessarily means at a faster initial speed assuming a similar angle of release— despite the fact that factors such as arm length, muscle mass, and joint stiffness individually don’t come close to exhibiting this degree of sex-defined advantage. One study of elite male and female baseball pitchers showed that men throw baseballs 35% faster than women—81 miles/hour for men vs. 60 miles/hour for women. The authors of this study attribute this to a sex-specific difference in the ability to generate muscle torque and power. (Chu 2009.) A study showing greater throwing velocity in male versus female handball players attributed it to differences in body size, including height, muscle mass, and arm length. (Van Den Tillaar 2012.) Interestingly, significant sex-related difference in throwing ability has been shown to manifest even before puberty, but the difference increases rapidly during and after puberty. (Thomas 1985 at 266.) These sex-determined differences in throwing speed are not limited to sports where a ball is thrown. Males have repeatedly been shown to throw a javelin more than 30% farther than females. (Lombardo 2018 Table 2; Hilton 2021 at 203.) Even in preadolescent children, differences exist. International youth records for 5- to

12-year-olds in the javelin show 34-55% greater distance in males vs. females using a 400g javelin.<sup>16</sup>

52. Men also serve and spike volleyballs with higher velocity than women, with a performance advantage in the range of 29-34%. (Hilton 2021.) Analysis of first and second tier Belgian national elite male volleyball players shows ball spike speeds of 63 mph and 56 mph respectively. (Forthomme 2005.) NCAA Division I female volleyball players—roughly comparable to the second-tier male elite group referenced above—average a ball spike velocity of approximately 40 mph (18.1 m/s). (Ferris 1995 at Table 2.) Notably, based on the measurements of these studies, male spiking speed in *lower* elite divisions is almost 40% greater than that of NCAA Division I female collegiate players. Separate analyses of serving speed between elite men and women Spanish volleyball players showed that the average power serving speed in men was 54.6 mph (range 45.3–64.6 mph), with maximal speed of 76.4 mph. In women, average power serving speed was 49 mph (range 41–55.3 mph) with maximal speed of 59 mph. This translates to an almost 30% advantage in maximal serve velocity in men. (Palao 2014.)

53. Recall that kinetic energy is dependent on mass and the square of velocity. A volleyball (with fixed mass) struck by a male, and traveling an

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<sup>16</sup> <http://age-records.125mb.com/>.



average 35% faster than one struck by a female, will deliver 82% more energy to a head upon impact.

54. The greater leg strength and jumping ability of men confer a further large advantage in volleyball that is relevant to injury risk. In volleyball, an “attack jump” is a jump to position a player to spike the ball downward over the net against the opposing team. Research on elite national volleyball players found that on average, males exhibited a 50% greater vertical jump height during an “attack” than did females. (Sattler 2015.) Similar data looking at countermovement jumps (to block a shot) in national basketball players reveals a 35% male advantage in jump height. (Kellis 1999.) In volleyball, this dramatic difference in jump height means that male players who are competing in female divisions will more often be able to successfully perform a spike, and this will be all the more true considering that the women’s net height is seven inches lower than that used in men’s volleyball. Confirming this inference, research also shows that the successful attack percentage (that is, the frequency with which the ball is successfully hit over the net into the opponent’s court in an attempt to score) is so much higher with men than women that someone analyzing game statistics can consistently identify games played by men as opposed to women on the basis of this statistic alone. These enhanced and more consistently successful attacks by men directly correlate to their greater jumping ability and attack velocity at the net. (Kountouris 2015.)

55. The combination of the innate male-female differences cited above, along with the lower net height in women's volleyball, means that if a reasonably athletic male is permitted to compete against women, the participating female players will likely be exposed to higher ball velocities that are outside the range of what is typically seen in women's volleyball. When we recall that ball-to-head impact is a common cause of concussion among women volleyball players, this fact makes it clear that participation in girls' or women's volleyball by biologically male individuals will increase concussion injury risk for participating girls or women.

56. Male sex-based advantages in leg strength also lead to greater kick velocity. In comparison with women, men kick balls harder and faster. A study comparing kicking velocity between university-level male and female soccer players found that males kick the ball with an average 20% greater velocity than females. (Sakamoto 2014.) Applying the same principles of physics we have just used above, we see that a soccer ball kicked by a male, travelling an average 20% faster than a ball kicked by a female, will deliver 44% more energy on head impact. Greater force-generating capacity will thus increase the risk of an impact injury such as concussion.

## **VI. ENHANCED FEMALE VULNERABILITY TO CERTAIN INJURIES**

57. Above, I have reviewed physiological differences that result in the male body bringing greater weight, speed, and force to the athletic field or court,

and how these differences can result in a greater risk of injury to females when males compete against them. It is also true that the female body is more vulnerable than the male body to certain types of injury even when subject to comparable forces. This risk appears to extend to the younger age cohorts as well. An analysis of Finnish student athletes from 1987-1991, analyzing over 600,000 person-years of activity exposures, found, in students under fifteen years of age, higher rates of injury in girls than boys in soccer, volleyball, judo and karate. (Kujala 1995.) Another epidemiological study looking specifically at injury rates in over 14,000 middle schoolers over a 20 year period showed that “in sex-matched sports, middle school girls were more likely to sustain *any* injury (RR = 1.15, 95% CI = 1.1, 1.2) or a time-loss injury (RR = 1.09, 95% CI = 1.0, 1.2) than middle school boys.” In analyzed both-sex sports (i.e., sex-separated sports that both girls and boys play, like soccer), girls sustained higher injury rates, and greater rates of time-loss injury. (Beachy 2014.) Another study of over 2000 middle school students at nine schools showed that the injury rate was higher for girls’ basketball than for football (39.4 v 30.7/1000 AEs), and injury rates for girls’ soccer were nearly double that of boys’ soccer (26.3 v. 14.7/1000 AEs). (Caswell 2017.) In this regard, I will focus on two areas of heightened female vulnerability to collision-related injury which have been extensively studied: concussions, and anterior cruciate ligament injuries.

### A. Concussions

58. Females are more likely than males to suffer concussions in comparable sports, and on average suffer more severe and longer lasting disability once a concussion does occur. (Harmon 2013 at 4; Berz 2015; Blumenfeld 2016; Covassin 2003; Rowson 2016.) Females also seem to be at higher risk for post-concussion syndrome than males. (Berz 2015; Blumenfeld 2016; Broshek 2005; Colvin 2009; Covassin 2012; Dick 2009; Marar 2012; Preiss-Farzanegan 2009.)

59. The most widely-accepted definition of sport-related concussion comes from the Consensus Statement on Concussion in Sport (see below).<sup>17</sup> (McCrory 2018.) To summarize, concussion is “a traumatically induced transient

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<sup>17</sup> “Sport related concussion is a traumatic brain injury induced by biomechanical forces. Several common features that may be utilised in clinically defining the nature of a concussive head injury include:

SRC may be caused either by a direct blow to the head, face, neck or elsewhere on the body with an impulsive force transmitted to the head.

SRC typically results in the rapid onset of short-lived impairment of neurological function that resolves spontaneously. However, in some cases, signs and symptoms evolve over a number of minutes to hours.

SRC may result in neuropathological changes, but the acute clinical signs and symptoms largely reflect a functional disturbance rather than a structural injury and, as such, no abnormality is seen on standard structural neuroimaging studies.

SRC results in a range of clinical signs and symptoms that may or may not involve loss of consciousness. Resolution of the clinical and cognitive features typically follows a sequential course. However, in some cases symptoms may be prolonged.

The clinical signs and symptoms cannot be explained by drug, alcohol, or medication use, other injuries (such as cervical injuries, peripheral vestibular dysfunction, etc) or other comorbidities (e.g., psychological factors or coexisting medical conditions).”

disturbance of brain function and involves a complex pathophysiological process” that can manifest in a variety of ways. (Harmon 2013 at 1.)

60. Sport-related concussions have undergone a significant increase in societal awareness and concurrent injury reporting since the initial passage of the Zachery Lystedt Concussion Law in Washington State in 2009 (Bompadre 2014), and the subsequent passage of similar legislation governing return-to-play criteria for concussed athletes in most other states in the United States. (Nat’l Cnf. of State Leg’s 2018). Concussion is now widely recognized as a common sport-related injury, occurring in both male and female athletes. (CDC 2007.) Sport-related concussions can result from player-surface contact or player-equipment contact in virtually any sport. However, sudden impact via a player-to-player collision, with rapid deceleration and the transmission of linear or rotational forces through the brain, is also a common cause of concussion injury. (Covassin 2012; Marar 2012; Barth 2001; Blumenfeld 2016; Boden 1998; Harmon 2013 at 4.)

61. A large retrospective study of U.S. high school athletes showed a higher rate of female concussions in soccer (79% higher), volleyball (0.6 concussions/10,000 exposures, with 485,000 reported exposures, vs. no concussions in the male cohort), basketball (31% higher), and softball/baseball (320% higher). (Marar 2012.) A similarly-sized, similarly-designed study comparing concussion rates between NCAA male and female collegiate athletes showed, overall, a concussion rate among females 40% higher than that of

males. Higher rates of injury were seen across individual sports as well, including ice hockey (10% higher); soccer (54% higher); basketball (40% higher); and softball/baseball (95% higher). (Covassin 2016.) The observations of these authors, my own observations from clinical practice, and the acknowledgment of our own Society's Position Statement (Harmon 2013), all validate the higher frequency and severity of sport-related concussions in women and girls.

62. Most epidemiological studies to date looking at sport-related concussion in middle schoolers show that more boys than girls are concussed. There are fewer studies estimating concussion *rate*. This is, in part, because measuring injury rate is more time and labor-intensive. Researchers at a childrens' hospital, for example, could analyze the number of children presenting to the emergency department with sport-related concussion and publish findings of absolute number. However, to study concussion incidence, athlete exposures also have to be recorded. Generally speaking, an athlete exposure is a single practice or game where an athlete is exposed to playing conditions that could reasonably supply the necessary conditions for an injury to occur. Rates of athletic injury, concussion among them, are then, by convention, expressed in terms of injury rate per 1000 athletic exposures. More recently, some studies have been published that analyze the rates of concussion in the middle school population. Looking at the evidence, the conclusion can be made that females experience increased susceptibility to concussive injuries before puberty. For example, Ewing-Cobbs, et al. (2018) found elevated post-

concussion symptoms in girls across all age ranges studied, including children between the ages of 4 and 8. Kerr's 2017 study of middle school students showed over three times the rate of female vs male concussion in students participating in sex-comparable sports [0.18 v. 0.66/1000 A.E.'s]. (Kerr 2017.) This is the first study I am aware of that mimics the trends seen in adolescent injury epidemiology showing a higher rate of concussion in girls than boys in comparable sports.

63. More recent research looking at the incidence of sport-related concussions in U.S. middle schoolers between 2015 and 2020, found that the rate of concussion was higher in middle school athletes than those in high school. In this study, girls had more than twice the rate of concussion injury (0.49/1000 athletic exposures vs 0.23/1000 AE) in analyzed sports (baseball/softball, basketball, soccer and track), as well as statistically greater time loss. (Hacherl 2021 (Journal of Athletic Training); Hacherl 2021 (Archives of Clinical Neuropsychology).) The authors hypothesized that the increasing incidence of concussion in middle school may relate to "other distinct differences associated with the middle school sport setting itself, such as, the large variations in player size and skill."<sup>18</sup>

64. In addition, females on average suffer materially greater cognitive impairment than males when they do suffer a concussion. Group differences in

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<sup>18</sup> <https://www.nata.org/press-release/062421/middle-school-sports-have-overall-higher-rate-concussion-reported-high-school>.

cognitive impairment between females and males who have suffered concussion have been extensively studied. A study of 2340 high school and collegiate athletes who suffered concussions determined that females had a 170% higher frequency of cognitive impairment following concussions, and that in comparison with males, female athletes had significantly greater declines in simple and complex reaction times relative to their preseason baseline levels. Moreover, the females experienced greater objective and subjective adverse effects from concussion even after adjusting for potentially protective effect of helmets used by some groups of male athletes. (Broshek 2005 at 856, 861; Colvin 2009; Covassin 2012.)

65. This large discrepancy in frequency and severity of concussion injury is consistent with my own observations across many years of clinical practice. The large majority of student athletes who have presented at my practice with severe and long-lasting cognitive disturbance have been adolescent girls. I have seen girls remain symptomatic for over a year, and lose ground academically and become isolated from their peer groups due to these ongoing symptoms. For patients who experience these severe effects, post-concussion syndrome can be life-altering.

66. Some of the anatomical and physiological differences that we have considered between males and females help to explain the documented differences in concussion rates and in symptoms between males and females. (Covassin 2016; La Fontaine 2019; Lin 2019; Tierney 2005; Wunderle 2014.)



Anatomically, there are significant sex-based differences in head and neck anatomy, with females exhibiting in the range of 30% to 40% less head-neck segment mass and neck girth, and 49% lower neck isometric strength. This means that when a female athlete's head is subjected to the same load as an analogous male, there will be a greater tendency for head acceleration, and resultant injury. (Tierney 2005 at 276-277.)

67. When modeling the effect of the introduction of male mass, speed, and strength into women's rugby, World Rugby gave particular attention to the resulting increases in forces and acceleration (and injury risk) experienced in the head and neck of female players. Their analysis found that "the magnitude of the known risk factors for head injury are . . . predicted by the size of the disparity in mass between players. The addition of [male] speed as a biomechanical variable further increases these disparities," and their model showed an increase of up to 50% in neck and head acceleration that would be experienced in a typical tackle scenario in women's rugby. As a result, "a number of tackles that currently lie beneath the threshold for injury would now exceed it, causing head injury." (World Rugby Transgender Women Guidelines 2020.) While rugby is notoriously contact-intensive, similar increases to risk of head and neck injury to women are predictable in any sport context in which males and females collide at significant speed, as happens from time to time in sports including soccer, softball, and basketball.

68. In addition, even when the heads of female and male athletes are subjected to identical accelerative forces, there are sex-based differences in neural anatomy and physiology, cerebrovascular organization, and cellular response to concussive stimuli that make the female more likely to suffer concussive injury, or more severe concussive injury. For instance, hypothalamic-pituitary disruption is thought to play a role in post-concussion symptomatology that differentially impacts women. (McGroarty 2020; Broshek 2005 at 861.) Another study found that elevated progesterone levels during one portion of the menstrual cycle were associated with more severe post-concussion symptomatology that differentially impacted women. (Wunderle 2014.)

69. As it stands, when females compete against each other, they already have higher rates of concussive injury than males, across most sports. The addition of biologically male athletes into women's contact sports will inevitably increase the risk of concussive injury to girls and women, for the multiple reasons I have explained above, including, but not limited to, the innate male advantage in speed and lean muscle mass. Because the effects of concussion can be severe and long-lasting, particularly for biological females, we can predict with some confidence that if participation by biological males in women's contact sports based on gender identity becomes more common, more biological females will suffer substantial concussive injury and the potential for long-term harm as a result.

**B. Anterior Cruciate Ligament injuries**

70. The Anterior Cruciate Ligament (“ACL”) is a key knee stabilizer that prevents anterior translation of the tibia relative to the femur and also provides rotatory and valgus knee stability.<sup>19</sup> (Lin 2019 at 4.) Girls and women are far more vulnerable to ACL injuries than are boys and men. The physics of injury that we have reviewed above makes it inevitable that the introduction of biologically male athletes into the female category will increase still further the occurrence of ACL injuries among girls or women who encounter these players on the field.

71. Sports-related injury to the ACL is so common that it is easy to overlook the significance of it. But it is by no means a trivial injury, as it can end sports careers, require surgery, and usually results in early-onset, post-traumatic osteoarthritis, triggering long-term pain and mobility problems later in life. (Wang 2020.)

72. Even in the historic context in which girls and women limit competition to (and so only collide with) other girls and women, the rate of ACL injury is substantially higher among female than male athletes. (Flaxman 2014; Lin 2019; Agel 2005.) One meta-analysis of 58 studies reports that female athletes have a 150% relative risk for ACL injury compared with male athletes, with other estimates suggesting as much as a 300% increased risk. (Montalvo 2019; Sutton 2013.) Particularly in those sports designated as contact sports, or

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<sup>19</sup> Valgus force at the knee is a side-applied force that gaps the medial knee open.

sports with frequent cutting and sharp directional changes (basketball, field hockey, lacrosse, soccer), females are at greater risk of ACL injury. In basketball and soccer, this risk extends across all skill levels, with female athletes between two and eight times more likely to sustain an ACL injury than their male counterparts. (Lin 2019 at 5.) These observations are widely validated, and consistent with the relative frequencies of ACL injuries that I see in my own practice.

73. When the reasons underlying the difference in the incidence of ACL injury between males and females were first studied in the early 1990s, researchers speculated that the difference might be attributable to females' relative inexperience in contact sports, or to their lack of appropriate training. However, a follow-up 2005 study looking at ACL tear disparities reported that, "Despite vast attention to the discrepancy between anterior cruciate ligament injury rates between men and women, these differences continue to exist." (Agel 2005 at 524.) Inexperience and lack of training do not explain the differences. Sex seems to be an independent predictor of ACL tear risk.

74. In fact, as researchers have continued to study this discrepancy, they have determined that multiple identifiable anatomical and physiological differences between males and females play significant roles in making females more vulnerable to ACL injuries than males. (Flaxman 2014; Lin 2019; Wolf 2015.) Summarizing the findings of a number of separate studies, one researcher recently cited as anatomical risk factors for ACL injury smaller ligament size,

decreased femoral notch width, increased posterior-inferior slope of the lateral tibia plateau, increased knee and generalized laxity, and increased body mass index (BMI). With the exception of increased BMI, each of these factors is more likely to occur in female than male athletes. (Lin 2019 at 5.) In addition, female athletes often stand in more knee valgus (that is, in a “knock-kneed” posture) due to wider hips and a medially-oriented femur. Often, this is also associated with a worsening of knee valgus during jump landings. The body types and movement patterns associated with these valgus knee postures are more common in females and increase the risk for ACL tear. (Hewett 2005.)

75. As with concussion, the cyclic fluctuation of sex-specific hormones in women is also thought to be a possible risk factor for ACL injury. Estrogen acts on ligaments to make them more lax, and it is thought that during the ovulatory phase of menses (when estrogen levels peak), the risk of ACL tear is higher. (Chidi-Ogbolu 2019 at 1; Herzberg 2017.)

76. Whatever the factors that increase the injury risk for ACL tears in women, the fact that a sex-specific difference in the rate of ACL injury exists is well established and widely accepted.

77. Although non-contact mechanisms are the most common reason for ACL tears in females, tears related to contact are also common, with ranges reported across multiple studies of from 20%-36% of all ACL injuries in women. (Kobayashi 2010 at 672.) For example, when a soccer player who is kicking a ball is struck by another player in the lateral knee of the stance leg, medial and

rotational forces can tear the medial collateral ligament (MCL), the ACL, and the meniscus. Thus, as participation in the female category based on identity rather than biology becomes more common (entailing the introduction of athletes with characteristics such as greater speed and lean muscle mass), and as collision forces suffered by girls and women across the knee increase accordingly, the risk for orthopedic injury and in particular ACL tears among impacted girls and women will inevitably rise.

78. Of course there exists variation in all these factors within a given group of males or females. However, it is also true that within sex-specific pools, size differential is somewhat predictable and bounded, even considering outliers. When males are permitted to enter into the pool of female athletes based on gender identity rather than biological sex, there is an increased possibility that a statistical outlier in terms of size, weight, speed, and strength—and potentially an extreme outlier—is now entering the female pool. Although injury is not guaranteed, risks to female participants will increase. And as I discuss later, the available evidence together suggests that this will be true even with respect to males who have been on testosterone suppression for a year or more. World Rugby relied heavily upon this when they were determining their own policy, and I think it is important to reiterate that this policy, rooted in concern for athlete safety, is justifiable based upon current evidence from medical research and what we know about biology.

## **VII. TESTOSTERONE SUPPRESSION WILL NOT PREVENT THE HARM TO FEMALE SAFETY IN ATHLETICS**

79. A recent editorial in the New England Journal of Medicine opined that policies governing transgender participation in female athletics “must safeguard the rights of all women—whether cisgender or transgender.” (Dolgin 2020.) Unfortunately, the physics and medical science reviewed above tell us that this is not practically possible. If biological males are given a “right” to participate in the female category based on gender identity, then biological women will be denied the right to reasonable expectations of safety and injury risk that have historically been guaranteed by ensuring that females compete (and collide) only with other females.

80. Advocates of unquestioning inclusion based on gender identity often contend that hormonal manipulation of a male athlete can feminize the athlete enough that he is comparable with females for purposes of competition. The NCAA’s Office of Inclusion asserts (still accessible on the NCAA website as of this writing) that “It is also important to know that any strength and endurance advantages a transgender woman arguably may have as a result of her prior testosterone levels dissipate after about one year of estrogen or testosterone suppression therapy.”<sup>20</sup> (NCAA 2011 at 8.) Whether or not this is true is a critically important question.

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<sup>20</sup> <https://www.ncaa.org/sports/2016/3/2/lesbian-gay-bisexual-transgender-and-questioning-lgbtq.aspx>

81. At the outset, we should note that while advocates sometimes claim that testosterone suppression *can* eliminate physiological advantages in a biological male, none of the relevant transgender eligibility policies that I am aware of prior to 2021 requires any demonstration that it has *actually* achieved that effect in a particular male who seeks admission into the female category. The Connecticut policy that is currently at issue in ongoing litigation permits admission to the female category at the high school level without requiring any testosterone suppression at all. Prior to their new policy, just announced in January 2022, the NCAA's policy required no demonstration of any reduction of performance capability, change in weight, or regression of any other physical attribute of the biological male toward female levels. It did not require achievement of any particular testosterone level, and did not provide for any monitoring of athletes for compliance. Moving forward, through a phasing process, the NCAA will ultimately require athletes in each sport to meet requirements of their sport's national governing body (NGB). If no policy exists, the policy of that sport's international governing body applies, or, finally, if no policy exists there, the 2015 policy of the International Olympic Committee (IOC) will apply. The 2015 IOC policy requires no showing of any diminution of any performance capability or physical attribute of the biological male, and requires achievement and compliance monitoring only of a testosterone level below 10nmol/liter—a level far above levels occurring in normal biological



females (0.06 to 1.68 nmol/L).<sup>21</sup> Indeed, female athletes with polycystic ovarian disorder—a condition that results in elevated testosterone levels—rarely exceed 4.8 nmol/L, which is the basis for setting the testing threshold to detect testosterone *doping* in females at 5.0 nmol/L. Thus, males who qualify under the 2015 IOC policy to compete as transgender women may have testosterone levels—even after hormone suppression—*double* the level that would disqualify a biological female for doping with testosterone.<sup>22</sup>

82. As Dr. Emma Hilton has observed, the fact that there are over 3000 sex-specific differences in skeletal muscle alone makes the hypothesis that sex-linked performance advantages are attributable solely to current circulating testosterone levels improbable at best. (Hilton 2021 at 200-01.)

83. In fact, the available evidence strongly indicates that no amount of testosterone suppression can eliminate male physiological advantages relevant to performance and safety. Several authors have recently reviewed the science and statistics from numerous studies that demonstrate that one year (or more) of testosterone suppression does not substantially eliminate male performance advantages. (Hilton 2021; De Varona 2021; Harper 2021.) As a medical doctor, I will focus on those specific sex-based characteristics of males who have

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<sup>21</sup> Normal testosterone range in a healthy male averages between 7.7 and 29.4 nmol/L.

<sup>22</sup> In November 2021, the IOC released new guidelines, deferring decision-making about a given sport's gender-affectedness to its governing body. The current NCAA policy, however, still utilizes the 2015 IOC policy to determine an athlete's eligibility in event that the sport's national and international governing bodies lack policies to determine eligibility.

undergone normal sex-determined pubertal skeletal growth and maturation that are relevant to the *safety* of female athletes. Here, too, the available science tells us that testosterone suppression does not eliminate the increased risk to females or solve the safety problem.

84. The World Rugby organization reached this same determination based on the currently available science, concluding that male physiological advantages that “create risks [to female players] appear to be only minimally affected” by testosterone suppression. (World Rugby Transgender Women Guidelines 2020.)

85. Surprisingly, so far as public information reveals, the NCAA’s Committee on Competitive Safeguards is not monitoring and documenting instances of transgender participation on women’s teams for purposes of injury reporting. In practice, the NCAA is conducting an experiment which in theory predicts an increased frequency and severity of injuries to women in contact sports, while at the same time failing to collect the relevant data from its experiment.

86. In their recent guidelines, UK Sport determined that, “based upon current evidence, testosterone suppression is unlikely to guarantee fairness between transgender women and natal females in gender-affected sports.” (UK Sports Councils’ Equality Group Guidance 2021 at 7.) They also warned that migration to a scenario by NGBs where eligibility is determined through case-by-case assessment “is unlikely to be practical nor verifiable for entry into

gender-affected sports,” in part because “many tests related to sports performance are volitional,” and incentives on the part of those tested would align with intentional poor performance. (UK Sports Councils’ Equality Group Guidance 2021 at 8.)

87. Despite these concerns, this appears to be exactly the route that the IOC is taking, as reflected in their Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity, released in November of 2021.<sup>23</sup> In it, the IOC lists two disparate goals. First, that “where sports organizations elect to issue eligibility criteria for men’s and women’s categories for a given competition, they should do so with a view to . . . [p]roviding confidence that no athlete within a category has an unfair and disproportionate competitive advantage . . . [and] preventing a risk to the physical safety of other athletes.” (IOC Framework 2021 § 4.1.) At the same time, governing bodies are not to preclude any athlete from competing until evidence exists based upon “robust and peer-reviewed research that . . . demonstrates a consistent, unfair, disproportionate competitive advantage in performance and/or an unpreventable risk to the physical safety of other athletes” – research moreover that “is largely based on data collected *from a demographic group that is consistent in gender and athletic engagement with the group that the eligibility*

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<sup>23</sup> The IOC Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations is available at [https://stillmed.olympics.com/media/Documents/News/2021/11/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf?\\_ga=2.72651665.34591192.1645554375-759350959.1644946978](https://stillmed.olympics.com/media/Documents/News/2021/11/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf?_ga=2.72651665.34591192.1645554375-759350959.1644946978)

*criteria aim to regulate.”* (IOC Framework 2021 § 6.1) Finally, affected athletes may appeal any evidence-based decision-making process through a further “appropriate internal mediation mechanism, such as a Court of Arbitration for Sport.” (IOC Framework 2021 § 6.1.) Rather than cite any of the growing evidence that testosterone suppression cannot mitigate sex-based performance differences, the IOC’s new policy remains aspirational and opaque. And yet the research relating to hormonal suppression in transgender athletes, as confirmed by World Rugby and UK Sport, already speaks very clearly to the fact that males retain a competitive advantage over women that cannot be eliminated through testosterone suppression alone. What follows is a brief summary of some of these retained differences as they relate to sport safety.

**A. Size and weight**

88. Males are, on average, larger and heavier. As we have seen, these facts alone mean that males bring more kinetic energy into collisions, and that lighter females will suffer more abrupt deceleration in collisions with larger bodies, creating heightened injury risk for impacted females.

89. I start with what is obvious and so far as I am aware undisputed—that after the male pubertal growth spurt, suppression of testosterone does not materially *shrink* bones so as to eliminate height, leverage, performance, and weight differences that follow from simply having longer, larger bones, and being subsequently taller.

90. In addition, multiple studies have found that testosterone suppression may modestly reduce, but does not come close to eliminating the male advantage in muscle mass and lean body mass, which together contribute to the greater average male weight. Researchers looking at transitioning adolescents found that the weight of biological male subjects *increased* rather than decreased after treatment with an antiandrogen testosterone suppressor. (Tack 2018.) In one recent meta-analysis, researchers looking at the musculoskeletal effects of hormonal transition found that even after males had undergone 36 months of therapy, their lean body mass and muscle area remained above those of females. (Harper 2021.) Another group in 2004 studied the effects of testosterone suppression to less than 1 nmol/L in men after one or more years, but still found only a 12% total loss of muscle area by the end of thirty-six months. (Gooren 2004.)

**B. Bone density**

91. Bone mass (which includes both size and density) is maintained over *at least* two years of testosterone suppression (Singh-Ospina 2017; Figuera 2019), and one study found it to be preserved even over a median of 12.5 years of suppression (Hilton 2021; Ruetsche 2005).

**C. Strength**

92. A large number of studies have now observed minimal or no reduction in strength in male subjects following testosterone suppression. In one recent meta-analysis, strength loss after twelve months of hormone therapy

ranged from negligible to 7%. (Harper 2021.) Given the baseline male strength advantage in various muscle groups of from approximately 25% to 100% above female levels that I have noted in Section V.D above, even a 7% reduction leaves a large retained advantage in strength. Another study looking at handgrip strength—which is a proxy for general strength—showed a 9% loss of strength after two years of hormonal treatment in males who were transitioning, leaving a 23% retained advantage over the female baseline. (Hilton 2021.) Yet another study which found a 17% retained grip strength advantage noted that this placed the median of the group treated with hormone therapy in the 95<sup>th</sup> percentile for grip strength among age-matched females. (Scharff 2019.) Researchers looking at transitioning adolescents showed no loss of grip strength after hormone treatment. (Tack 2018.)

93. One recent study on male Air Force service members undergoing transition showed that they retained more than two thirds of pretreatment performance advantage over females in sit-ups and push-ups after between one and two years of testosterone-reducing hormonal treatment. (Roberts 2020.) Another recently-published observational cohort study looked at thigh strength and thigh muscle cross-sectional area in men undergoing hormonal transition to transgender females. After one year of hormonal suppression, this group saw only a 4% decrease in thigh muscle cross-sectional area, and a negligible decrease in thigh muscle strength. (Wiik 2020.) Wiik and colleagues looked at isokinetic strength measurements in individuals who had undergone at least 12

months of hormonal transition and found that muscle strength was comparable to baseline, leaving transitioned males with a 50% strength advantage over reference females. (Wiik 2020.) Finally, one cross-sectional study that compared men who had undergone transition at least three years prior to analysis, to age-matched, healthy males found that the transgender individuals had retained enough strength that they were still outside normative values for women. This imbalance continued to hold even after *eight* years of hormone suppression. The authors also noted that since males who identify as women often have lower baseline (i.e., before hormone treatment) muscle mass than the general population of males, and since baseline measures for this study were unavailable, the post-transition comparison may actually represent an overestimate of muscle mass regression in transgender females. (Lapauw 2008; Hilton 2021.)

94. World Rugby came to the same conclusion based on its own review of the literature, reporting that testosterone suppression “does not reverse muscle size to female levels,” and in fact that “studies assessing [reductions in] mass, muscle mass, and/or strength suggest that reduction in these variables range between 5% and 10%. Given that the typical male vs female advantages range from 30% to 100%, these reductions are small.” (World Rugby Transgender Women Guidelines 2020.)

95. It is true that most studies of change in physical characteristics or capabilities over time after testosterone suppression involve untrained subjects

rather than athletes, or subjects with low to moderate training. It may be assumed that all of the Air Force members who were subjects in the study I mention above were physically fit and engaged in regular physical training. But neither that study nor those studies looking at athletes quantify the volume or type of strength training athletes are undergoing. The important point to make is that the only effect strength training could have on these athletes is to *counteract* and reduce the limited loss of muscle mass and strength that does otherwise occur to some extent over time with testosterone blockade. There has been at least one study that illustrates this, although only over a short period, measuring strength during a twelve-week period where testosterone was suppressed to levels of 2 nmol/L. During that time, subjects actually increased leg lean mass by 4%, and total lean mass by 2%, and subject performance on the 10 rep-max leg press improved by 32%, while their bench press performance improved by 17%. (Kvorning 2006.)

96. The point for safety is that superior strength enables a biological male to apply greater force against an opponent's body during body contact, or to throw, hit, or kick a ball at speeds outside the ranges normally encountered in female-only play, with the attendant increased risks of injury that I have already explained.

#### **D. Speed**

97. As to speed, the study of transitioning Air Force members found that these males retained a 9% running speed advantage over the female control



group after one year of testosterone suppression, and their average speed had not declined significantly farther by the end of the 2.5 year study period. (Roberts 2020.) Again, I have already explained the implications of greater male speed on safety for females on the field and court, particularly in combination with the greater male body weight.

### CONCLUSION

Since the average male athlete is larger and exerts greater power than the average female athlete in similar sports, male–female collisions will produce greater energy at impact, and impart greater risk of injury to a female, than would occur in most female-female collisions. Because of the well-documented physiological testing and elite performance differences in speed and strength, as well as differences in lean muscle mass that exist across all age ranges, the conclusions of this paper can apply to a certain extent before, as well as during, and after puberty. We have seen that males who have undergone hormone therapy in transition toward a female body type nevertheless retain musculoskeletal “legacy” advantages in muscle girth, strength, and size. We have also seen that the additive effects of these individual advantages create multiplied advantages in terms of power, force generation and momentum on the field of play. In contact or collision sports, sports involving projectiles, or sports where a stick is used to strike something, the physics and physiology reviewed above tell us that permitting male-bodied athletes to compete against, or on the same team as females—even when undergoing testosterone

suppression—must be expected to create predictable, identifiable, substantially increased, and unequal risks of injuries to the participating women.

Based on its independent and extensive analysis of the literature coupled with injury modeling, World Rugby recognized the inadequacy of the International Olympic Committee's policy to preserve safety for female athletes in their contact sport (the NCAA policy is even more lax in its admission of biological males into the female category). Among the explicit findings of the World Rugby working group were the following:

- Forces and inertia faced by a smaller and slower player during collisions are significantly greater when in contact with a larger, faster player.
- Discrepancies in mass and speed (such as between two opponents in a tackle) are significant determinants of various head and other musculoskeletal injury risks.
- The risk of injury to females is increased by biological males' greater ability to exert force (strength and power), and also by females' reduced ability to receive or tolerate that force.
- Testosterone suppression results in only "small" reductions in the male physiological advantages. As a result, heightened injury risks remain for females who share the same field or court with biological males.
- These findings together predict a significant increase in injury rates for females in rugby if males are permitted to participate based on gender identity, *with or without testosterone suppression*, since the magnitude of forces and energy transfer during collisions will increase substantially, directly correlated to the differences in physical attributes that exist between the biological sexes.

Summarizing their work, the authors of the World Rugby Guidelines said that, "World Rugby's number one stated priority is to make the game as safe as

possible, and so World Rugby cannot allow the risk to players to be increased to such an extent by allowing people who have the force and power advantages conferred by testosterone to play with and against those who do not.” (World Rugby Transgender Guidelines 2020.) As my own analysis above makes clear, I agree with the concerns of UK Sport and the conclusions of World Rugby regarding risk to female athletes. Importantly, I also agree that it must be a high priority for sports governing bodies (and other regulatory or governmental bodies governing sports) to make each sport as safe as reasonably possible. And in my view, medical practitioners with expertise in this area have an obligation to advocate for science-based policies that promote safety.

The *performance* advantages retained by males who participate in women’s sports based on gender identity are readily recognized by the public. When an NCAA hurdler who ranked 200<sup>th</sup> while running in the collegiate male division transitions and immediately leaps to a number one ranking in the women’s division;<sup>24</sup> when a high school male sprinter who ranked 181<sup>st</sup> in the state running in the boys’ division transitions and likewise takes first place in the girls’ division (De Varona 2021), the problem of fairness and equal opportunities for girls and women is immediately apparent, and indeed this problem is being widely discussed today in the media.

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<sup>24</sup> [https://en.wikipedia.org/wiki/Cece\\_Telfer](https://en.wikipedia.org/wiki/Cece_Telfer) (accessed 6/20/21)

The causes of sports injuries, however, are multivariate and not always as immediately apparent. While, as I have noted, some biological males have indeed competed in a variety of girls' and women's contact sports, the numbers up till now have been small. But recent studies have reported very large increases in the number of children and young people identifying as transgender compared to historical experience. For example, an extensive survey of 9th and 11th graders in Minnesota found that 2.7% identified as transgender or gender-nonconforming— well over 100 times historical rates (Rider 2018), and many other sources likewise report this trend.<sup>25</sup>

Faced with this rapid social change, it is my view as a medical doctor that policymakers have an important and pressing duty not to wait while avoidable injuries are inflicted on girls and women, but instead to proactively establish policies governing participation of biological males in female athletics that give proper and scientifically-based priority to safety in sport for these girls and women. Separating participants in contact sports based on biological sex preserves competitive equity, but also promotes the safety of female athletes by protecting them from predictable and preventable injury. Otherwise, the hard science that I have reviewed in this white paper leaves little doubt that eligibility policies based on ideology or gender identity rather than science, will,

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<sup>25</sup> [https://www.nytimes.com/2016/07/01/health/transgender-population.html?mc=aud\\_dev&ad-keywords=auddevgate&gclid=Cj0KCQjwkZiFBhD9ARIsAGxFX8BV5pozB9LI5Ut57OQzuMhu rWThv BMisV9NyN9YTXIzWl7OAnGT6VkaAu0jEALw\\_wcB&gclsrc=aw.ds](https://www.nytimes.com/2016/07/01/health/transgender-population.html?mc=aud_dev&ad-keywords=auddevgate&gclid=Cj0KCQjwkZiFBhD9ARIsAGxFX8BV5pozB9LI5Ut57OQzuMhu rWThv BMisV9NyN9YTXIzWl7OAnGT6VkaAu0jEALw_wcB&gclsrc=aw.ds) (accessed 6/20/21)

over time, result in increased, and more serious, injuries to girls and women who are forced to compete against biologically male transgender athletes. When basic science and physiology both predict increased injury, then leagues, policy-makers, and legislators have a responsibility to act to protect girls and women before they get hurt.

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## **APPENDIX – LIST OF PUBLICATIONS**

### **Publications of Dr. Chad Thomas Carlson, M.D., FACSM**

Sports Medicine CAQ Study Guide, Healthy Learning, 2021 [editor].

SEXUAL VIOLENCE IN SPORT: AMERICAN MEDICAL SOCIETY FOR SPORTS MEDICINE POSITION STATEMENT. Published in Curr Sports Med Reports June 2020;19(6):232-4; Clin J Sports Med June 8 2020; Br J Sports Med 2020;0:1-3.

Traveling with Medication. NCAA Sports Science Institute Bulletin, 2015  
<http://www.ncaa.org/sport-science-institute/traveling-medication>.

A SURVEY OF STATE MEDICAL LICENSING BOARDS: CAN THE TRAVELING TEAM PHYSICIAN PRACTICE IN YOUR STATE? 2013. Jan (47)1:60-62.

AXIAL BACK PAIN IN THE ATHLETE: PATHOPHYSIOLOGY AND APPROACH TO REHABILITATION. Curr Rev Musculoskel Med. 2009 (2):88-93.

THE NATURAL HISTORY AND MANAGEMENT OF HAMSTRING INJURIES. Curr Rev Musculoskel Med 2008 (1):120-128.

SPONDYLOLYSIS AND THE ATHLETE. Athletic Ther Today. 2007 (12)4:37-39.

“ACUTE SUBDURAL HEMATOMA IN A HIGH SCHOOL FOOTBALL PLAYER,” J Athl Training, 38;2(63), 2003.

THE RELATIONSHIP OF EXCESSIVE WEIGHT LOSS TO PERFORMANCE IN HIGH SCHOOL WRESTLERS – A PILOT STUDY; presented at the AMSSM national meeting, San Diego, CA, 2000; Clinical Journal of Sport Medicine 10(4):310, October, 2000.



## **CURRICULUM VITAE (ABBREVIATED)**

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Active professional licenses: IA, NE, CA, TX, TN, NC, AZ, FL (telemed)

Board certified family medicine, ABMS 1998; recertified 2005, 2012

Board certified sports medicine, ABMS 1999; recertified 2009, 2019

### EDUCATION:

- Fellowship: Sports Medicine -- Ball Memorial Hospital/Central Indiana Orthopedics, 1997-1999; Completed 4/99
- Residency: University of Michigan Department of Family Medicine, 1994-97
- University of Nebraska College of Medicine  
M.D. obtained May 1994
- University of Nebraska at Lincoln  
B.S. with majors in history (emphasis American) and biology obtained May 1990

### EMPLOYMENT HISTORY:

- Physician Owner, Stadia Sports Medicine, West Des Moines, IA, 2006 - present
- Staff Physician, University of Illinois, 9/04-6/06
- Director, Carle Sports Medicine, Carle Foundation Hospital, Urbana, IL, 2001-2004; Team physician, University of Illinois.
- Private practice, Ionia County Hospital, Ionia, MI, 1999-2001.

### HOSPITAL AFFILIATIONS:

- Iowa Methodist Hospital, Des Moines
- Mercy Medical Center, Des Moines

### PROFESSIONAL HONORS/AWARDS:

- Appointed to Board of Directors, Physical Activity Alliance, 2020
- Appointed to joint AMSSM/NCAA COVID-19 Working Group, March 2020-present
  - Medical advisory panel, 2021 Women's Division I NCAA Basketball Tournament
- AMSSM Founders Award 2019, awarded once annually for the Sports Medicine Physician nationally who best exemplifies the practice of Sports Medicine
- Fellow designation, American Medical Society for Sports Medicine, 2019
- Elected to Executive Committee, American Medical Society for Sports Medicine, 2017-21
  - **President of AMSSM, 2019-2020**

- Practice/Policy Committee, AMSSM, 2007-2016 (Former Chair)
  - Author of US HR 921, the Sports Medicine Licensure Clarity Act, which passed the US House of Representatives and Senate in January 2017, and was signed into law by President Trump, 2017
- Appointed member of physician liaison group to the NCAA to discuss return to sport strategies in the COVID-19 pandemic, 2020
- Appointed to Board of Directors, Running the Race, 2018-present
- Sports Ultrasound Committee, Policy Co-Chair, AMSSM, 2015-2017
- Elected to Board of Directors, American Medical Society for Sports Medicine, 2009-2013.
- Member, Health and Science Policy Committee, ACSM, 2010-present
  - Chair, Clinical Medicine Subcommittee, HSPC, ACSM, 2012-2015
- Iowa Medical Society Leadership Development Committee, 2022
- Member of Sports Medicine Subcommittee for the Iowa State Medical Society, 2007-present
  - Iowa designate to National Youth Sports Safety Summit
    - New York City – 2015
    - Indianapolis – 2016
    - Kansas City – 2017
- AMSSM designate for the American Academy of Orthopaedic Surgeons' Knee Osteoarthritis Quality Measure review committee, 2014-2016
- Associate Editor, Current Reviews in Musculoskeletal Medicine, 2006-2010.
- Fellow, American College of Sports Medicine: Designated in 2004

#### SPECIAL QUALIFICATIONS:

- Prior legal consulting work in cases with both local and national reach
- Extensive training in office musculoskeletal injury
- Oversight of treadmill stress testing/metabolic stress testing
- Independent consultation regarding establishment of individual exercise programs consistent with revised ACSM guidelines
- Proficient at evaluation/management of bone mineral density problems at all ages
- Qualified procedurally for:
  - Ultrasound diagnostic testing and guided injections
  - Joint injection/aspiration
  - Percutaneous tenotomy (TENEX)
  - Rotator cuff barbotage
  - Lactate/Anaerobic threshold,  $VO_2$  MAX/ exercise testing
  - Laryngoscopy for vocal cord assessment
  - Compartment pressure assessment
  - Ultrasound-guided nerve blocks
- Extensive experience speaking to large national groups on issues pertaining to sports medicine, including, but not limited to:
  - Overuse Injury
  - Head and Neck Injuries on the Field
  - Exercise-Induced Asthma
  - The Shoulder Exam
  - Principles of Exercise Prescription
  - Traumatic Brain Injury in Sport
  - The Knee Exam
  - The Ankle Exam
  - The Hip Exam
  - The Pre-Participation Exam
  - Cardiopulmonary Exercise Testing for Determination of Training Zone Estimates and to Identify Causes of Exercise-Related Dyspnea
  - Athletic Amenorrhea
  - Advocacy in Sports Medicine
  - Medical Practice Economics

PUBLICATIONS/RESEARCH:

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- AXIAL BACK PAIN IN THE ATHLETE: PATHOPHYSIOLOGY AND APPROACH TO REHABILITATION. Curr Rev Musculoskel Med. 2009 (2):88-93
- SPONDYLOLYSIS AND THE ATHLETE. Athletic Ther Today. 2007 (12)4:37-39.
- THE NATURAL HISTORY AND MANAGEMENT OF HAMSTRING INJURIES. Curr Rev Musculoskel Med 2008 (1):120-128.
- A SURVEY OF STATE MEDICAL LICENSING BOARDS: CAN THE TRAVELING TEAM PHYSICIAN PRACTICE IN YOUR STATE? BJSM. 2013. Jan (47)1:60-62.
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  - Curr Sports Med Reports June 2020;19(6):232-4.
  - Clin J Sports Med June 8 2020;
  - Br J Sports Med 2020;0:1-3
- "ACUTE SUBDURAL HEMATOMA IN A HIGH SCHOOL FOOTBALL PLAYER," J Athl Training, 38;2(63), 2003
- Traveling with Medication. NCAA Sports Science Institute Bulletin, 2015 <http://www.ncaa.org/sport-science-institute/traveling-medication>
- THE RELATIONSHIP OF EXCESSIVE WEIGHT LOSS TO PERFORMANCE IN HIGH SCHOOL WRESTLERS – A PILOT STUDY; presented at the AMSSM national meeting, San Diego, CA, 2000  
Clinical Journal of Sport Medicine 10(4):310, October, 2000

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

-----  
)  
B.P.J. by her next friend and)  
mother, HEATHER JACKSON, )

)  
Plaintiff, )

)  
vs. )

No. 2:21-cv-00316

)  
WEST VIRGINIA STATE BOARD OF )  
EDUCATION, HARRISON COUNTY )  
BOARD OF EDUCATION, WEST )  
VIRGINIA SECONDARY SCHOOL )  
ACTIVITIES COMMISSION, W. )  
CLAYTON BURCH in his official )  
capacity as State )  
Superintendent, DORA STUTLER, )  
in her official capacity as )  
Harrison County )  
Superintendent, and THE STATE )  
OF WEST VIRGINIA, )

)  
Defendants. )

)  
LAINEY ARMISTEAD, )

)  
Defendant-Intervenor. )  
-----

REMOTE VIDEOTAPED DEPOSITION OF  
CHAD T. CARLSON, M.D., FACSM  
Monday, March 28, 2022  
Volume I

Reported by:  
ALEXIS KAGAY  
CSR No. 13795  
Job No. 5122881  
PAGES 1 - 227

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
3                   CHARLESTON DIVISION  
4  
5

6                   \_\_\_\_\_  
7                   B.P.J. by her next friend and)  
8                   mother, HEATHER JACKSON,                   )

9                   Plaintiff,                   )

10                   vs.                   )

11                   ) No. 2:21-cv-00316

12                   WEST VIRGINIA STATE BOARD OF )  
13                   EDUCATION, HARRISON COUNTY )  
14                   BOARD OF EDUCATION, WEST )  
15                   VIRGINIA SECONDARY SCHOOL )  
16                   ACTIVITIES COMMISSION, W. )  
17                   CLAYTON BURCH in his official )  
18                   capacity as State )  
19                   Superintendent, DORA STUTLER, )  
20                   in her official capacity as )  
21                   Harrison County )  
22                   Superintendent, and THE STATE )  
23                   OF WEST VIRGINIA,                   )

24                   Defendants.                   )

25                   LAINEY ARMISTEAD,                   )

                 Defendant-Intervenor.                   )

                 \_\_\_\_\_  
Videotaped deposition of CHAD T. CARLSON,  
M.D., FACSM, Volume I, taken on behalf of Plaintiff,  
with all participants appearing remotely, beginning  
at 9:01 a.m. and ending at 3:19 p.m. on Monday,  
March 28, 2022, before ALEXIS KAGAY, Certified  
Shorthand Reporter No. 13795.

1 A Okay. I've got it.

2 Q So if you go to paragraph -- so page 9,  
3 paragraph 11 C.

4 A Okay.

5 Q And in the middle of paragraph 11 C, the -- 11:10:07  
6 there's a sentence that begins with "Even before."

7 A Correct.

8 Q So there you say (as read):

9 "Even before puberty, males have a  
10 performance advantage over females 11:10:24  
11 in most athletic events."

12 Correct?

13 A That is correct.

14 Q And that sentence wasn't contained in your  
15 first version of your white paper from June 2021; 11:10:32  
16 right?

17 A As I said, that was not the focus of that  
18 paper, so that's correct.

19 Q Okay. Why did you decide to include it in  
20 this paper? 11:10:48

21 A When --

22 MR. FRAMPTON: Objection to the form.

23 Go ahead.

24 THE WITNESS: When I was retained by  
25 West Virginia in this case, discussions between 11:11:04

1 attorneys at ADF and attorneys at West Virginia --

2 MR. TRYON: I just want to insert here,

3 please don't -- again, this is attorney-client --

4 don't get into attorney-client protected

5 information. So discussions with counsel are 11:11:26

6 protected.

7 MR. FRAMPTON: Right.

8 MR. TRYON: But to the extent that you can

9 answer that without disclosing that -- those

10 communications, you may do so. 11:11:32

11 MR. FRAMPTON: Yeah, same -- same

12 instruction.

13 THE WITNESS: Okay. So I -- I -- I guess

14 what I would say is that the initial report was

15 filed -- was created prior to being retained by the 11:11:42

16 State of West Virginia and the updated paper that

17 you have was updated to include the prepubertal

18 population because my understanding is that the

19 defendant in this case is -- is young.

20 BY MR. BLOCK: 11:12:14

21 Q Before you were asked to update the white

22 paper, did you have an expert opinion regarding the

23 safety implications of prepubertal boys and girls

24 playing together?

25 MR. FRAMPTON: Objection to the form. 11:12:26

1 THE WITNESS: Many of the considerations that  
2 exist in that first paper are relevant to the  
3 prepubertal group. I suspected that they would  
4 probably hold, and I do believe that they hold.

5 BY MR. BLOCK: 11:12:58

6 Q So -- so before you were asked to update your  
7 paper, you had an expert opinion that it would be  
8 unsafe for prepubertal girls and play -- and boys to  
9 play together?

10 MR. FRAMPTON: Objection to the form. 11:13:10

11 THE WITNESS: As I said, I suspected that  
12 there was probably risk in that population as well.

13 BY MR. BLOCK:

14 Q Now, you talked about the literature review  
15 you conducted for creating your white paper. What 11:13:31  
16 sort of literature review did you conduct for the  
17 process of updating the right -- the white paper to  
18 discuss prepubertal kids?

19 A I went more into the picture on population  
20 testing, looking at what differences in performance 11:14:01  
21 were between boys and girls. I looked at  
22 international and national performance records,  
23 databases. I looked at ratified standards for --  
24 that had been determined through, for instance, the  
25 presidential physical fitness test. 11:14:35



1 Q How did you identify what sources to look at?

2 A PubMed. I own -- well, PubMed.

3 Q Did you review any sources that were not  
4 included in Dr. Brown's 2022 expert report?

5 MR. FRAMPTON: Objection to the form. 11:15:06

6 THE WITNESS: I couldn't speak to that  
7 because I haven't cross-referenced his bibliography  
8 to mine.

9 BY MR. BLOCK:

10 Q In paragraph 16, page 12 of your report, 11:15:26  
11 could you turn to that?

12 A Yes, I'm there.

13 Q So -- so right before paragraph 17, the --  
14 the final sentence in paragraph 16, it says (as  
15 read): 11:15:53

16 "Although most easily documented in  
17 athletes who have gone through  
18 puberty, these differences are not  
19 exclusively limited to  
20 post-pubescent athletes either." 11:16:04

21 Did I read that right?

22 A You did.

23 Q Okay. And how -- can you explain to me how  
24 these differences are most easily documented in  
25 athletes who have gone through puberty? 11:16:17

1	A	Of course.
---	---	------------

2           The differences between men and women with  
3       regards to strength and -- both upper and lower  
4       body -- and muscle mass and power increase,  
5       there's -- there's greater separation between the           11:16:48  
6       sexes after puberty has occurred. That doesn't mean  
7       that there's no difference prior.

8 Q But you -- you say it's most easily  
9 documented. What did you mean by "most easily  
10 documented"? 11:17:07

11 MR. FRAMPTON: Object to the form.

12 MR. BLOCK: I'm sorry, what's the -- what's  
13 the form objection to that?

14 MR. FRAMPTON: The objection is I -- I  
15 don't -- I don't think you've properly stated what 11:17:30  
16 he said.

17 BY MR. BLOCK:

18 Q What -- what did you mean when you said "most  
19 easily documented"?

```
20      A    Meaning that the -- that wider differences      11:17:39
21      are more apparent than narrow differences.
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22 Q So paragraph 17 says (as read):

23 "I have reviewed the expert

24                    declaration of Gregory A. Brown,

25	Ph.D., FACM of February 23, 2022,	11:17:58
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1 provided in this case..."

2 Correct?

3 A Correct.

4 Q Okay. And the date of this document that

5 we're reading from is also February 23rd, 2022; 11:18:09

6 correct?

7 A Correct.

8 Q Okay. So how did you read Dr. Brown's expert

9 declaration dated the same day as your declaration?

10 A That was provided to me by attorneys at ADF. 11:18:31

11 Q Did you read Dr. Brown's declaration after it

12 had already been signed?

13 A I can't speak to when he signed that, so I

14 don't know the answer to that question.

15 Q Did you review Dr. Brown's declaration on 11:18:52

16 February 23rd, 2022?

17 A I don't recall when I reviewed it.

18 Q Now, the sentence continues -- I'll just read

19 it from the beginning again.

20 (As read): 11:19:15

21 "I have reviewed the expert

22 declaration of Gregory A. Brown,

23 Ph.D., FACM of February 23, 2022,

24 provided in this case, which

25 includes evidence from a wide 11:19:23

1 variety of sources, including  
2 population-based mass testing data,  
3 as well as age-stratified  
4 competition results, all of which  
5 support the idea that prepubertal 11:19:35  
6 males run faster, jump higher and  
7 farther, exhibit higher aerobic  
8 power output, and have greater upper  
9 body strength (evidenced by stronger  
10 hand grip and better performance 11:19:45  
11 with chin-ups or bent arm hang) than  
12 comparably aged females."

13 Did I read that right?

14 A You did.

15 Q Okay. And then you go on to say that this is 11:19:55  
16 documented in Presidential Fitness Test, Euro  
17 Fitness Test and additional mass testing data from  
18 the UK and Australia; correct?

19 A Correct.

20 Q Now, are those fitness tests what you were 11:20:05  
21 referring to earlier when you were discussing  
22 additional research you had done to update your  
23 white paper?

24 A Yes.

25 Q Okay. Do you actually cite to those fitness 11:20:18

1 test results in the bibliography of this white  
2 paper?

3 A I don't believe that that's in there.

4 Q Okay. So does this refresh your recollection  
5 about whether you -- about how -- I'll take this -- 11:20:36  
6 I'll -- strike that. I'll ask again.

7 Do you -- did you become aware of these  
8 differences in test results from reading Dr. Brown's  
9 declaration?

10 A No. I had been familiar with some of those 11:20:55  
11 papers prior.

12 Q When did you become familiar with them?

13 A In the course of -- likely in the course of  
14 initial review, on -- on PubMed searches.

15 Q Can you turn to page 61 of the document? 11:21:24  
16 That's your bibliography.

17 A Okay.

18 Q Can you point out to me the sources in the  
19 bibliography addressing performance differences  
20 between -- or -- or differences in body composition 11:22:03  
21 between prepubertal girls and prepubertal boys?

22 A We're speaking to performance differences;  
23 correct?

24 Q Or physiological differences.

25 A Papers that I referenced are not in there. 11:23:25

1 Q Okay. Why not?

2 A I reviewed -- papers that I had reviewed  
3 beforehand were referenced within Dr. Brown's  
4 report.

5 Q On the -- if -- going back to paragraph 17, 11:24:26  
6 which is -- well, if you could go back to  
7 paragraph 17. So that's pages 12 and 13.

8 12 and 13. Hopefully, I said that correctly.

9 If you could go to the end of paragraph 17,  
10 which is on page 13. 11:24:51

11 A Okay.

12 Q Let me know when you're there.

13 A I'm there.

14 Q Okay. It says (as read):

15 In sum, a large and unbridgeable 11:25:01  
16 performance gap exists between  
17 the" -- "exists" --

18 Let me try that again. I need another cup of  
19 coffee.

20 It says (as read): 11:25:11

21 "In sum, a large and unbridgeable  
22 performance gap between the sexes is  
23 well-studied and equally  
24 well-documented, beginning in many  
25 cases before puberty." 11:25:20

1 Do you see that sentence?

2 A I do.

3 Q Okay. Is -- do you believe that the  
4 performance gap before puberty is unbridgeable?

5 A No, that's not what I said. 11:25:37

6 Q That's why I'm asking the question.

7 A No.

8 Q Do -- do you --

9 A What -- what it says is large and  
10 unbridgeable performance gap between the sexes is 11:25:46  
11 well-studied beginning in many cases before puberty.

12 Q Okay. In -- in many cases, is there an  
13 unbridgeable performance gap before puberty?

14 A I believe, based on the -- I believe if you  
15 look at the -- of how sex-based records break down, 11:26:14  
16 that we're talking about upper-end performance that  
17 it reflects, in -- as I said, in many cases, an  
18 unbridgeable gap.

19 Q How about average differences between boys  
20 and girls before puberty, is the gap so large to be 11:26:44  
21 unbridgeable?

22 A Not in all cases, no.

23 Q In which case is -- is it large enough to be  
24 unbreakable?

25 A Well, for example, boys can outperform girls 11:27:02

1 as early as age seven and ups at between 100 and  
2 1200 percent improved.

3 Q And do you have an expert opinion on whether  
4 or not those differences are attributable to innate  
5 physiological characteristics? 11:27:41

6 A As -- as a physician who works with athletes  
7 of all ages, every day, I do have an opinion that  
8 biology plays a role in the measured performance  
9 differences that exist in the literature with  
10 respect to prepubertal children, yes. 11:28:11

11 Q So you said biology plays a role.  
12 Is biology the exclusive thing that plays a  
13 role?

14 A I'm not aware of any peer-reviewed study that  
15 looks at the exact contribution of biology versus 11:28:36  
16 other causes when it comes to performance in  
17 prepubertal children.

18 Q Are you -- are you aware of any data  
19 measuring the performance of transgender girls  
20 before puberty in -- in athletic contests or 11:28:51  
21 physical fitness studies?

22 A I'm not aware of any literature looking  
23 specifically at prepubertal transgender girls in --  
24 in their performance of sport, no.

25 Q Just to clarify the scope of your expert 11:29:14



1 opinions in this case, are you providing an expert  
2 opinion in this case regarding athletic advantages  
3 between males and females?

4 MR. FRAMPTON: Objection; form.

5 Go ahead. 11:29:46

6 THE WITNESS: I am providing an opinion in  
7 this case on the safety issues that exist when those  
8 of one sex cross over and participate in sports.

9 BY MR. BLOCK:

10 Q So -- so your expert opinion in this case is 11:30:01  
11 exclusively about the safety issues; correct?

12 THE VIDEOGRAPHER: I believe Dr. Carlson's  
13 Internet might have been having a problem. You  
14 might need to repeat your question.

15 MR. BLOCK: Sure. 11:30:37

16 BY MR. BLOCK:

17 Q So your expert testimony in this case is  
18 exclusively about the safety issues involved when  
19 males and females play together; right?

20 MR. FRAMPTON: Objection; form. 11:30:53

21 Go ahead.

22 THE WITNESS: It is about the safety issues  
23 that are involved when males and -- when males cross  
24 over into women's sports particularly, and some of  
25 that opinion relates to differences in certain 11:31:08

1 variables, such as speed.

2 BY MR. BLOCK:

3 Q You're not providing an expert opinion on the  
4 fairness of allowing transgender girls to  
5 participate on girls' teams; right? 11:31:29

6 A I'm not providing an opinion on fairness as  
7 relates to transgender participation, no.

8 Q If you could go to paragraph 21 of your  
9 report -- it's on page 15. So about four lines from  
10 the top -- there's a sentence that begins with "To 11:32:12  
11 the latter point."

12 A "To the latter point, children don't play  
13 contact sports..."?

14 Q Yeah. So it says (as read):

15 "To the latter point, children don't 11:32:28  
16 play contact sports with adults and,  
17 in a great majority of cases, men  
18 and women compete in categories  
19 specific to their own biological  
20 sex." 11:32:37

21 Do you see that?

22 A I do.

23 Q Okay. And so that sentence has been changed  
24 from the version of that sentence that appeared in  
25 your June 2021 report; correct? 11:32:49

1           A    I can't recall. I'd have to go back and look  
2           at that report.

3           Q    Okay. Let's go back and look at it. It's on  
4           page 11 of your earlier report.

5           A    Okay. 11:33:37

6           Q    All right. So on page 11 of your report,  
7           paragraph 18, a couple lines from the bottom, it  
8           says (as read):

9                    "To the latter point, children don't  
10                   play contact sports with adults and, 11:33:45  
11                   as has already been discussed, after  
12                   the onset of puberty, men and women  
13                   compete in categories specific to  
14                   their own biological sex."

15           Do you see that? 11:33:54

16           A    I do.

17           Q    Okay. And so then in your February report,  
18           the -- the words after "the onset of puberty" are  
19           taken out, and the words "in the great majority of  
20           cases" are -- are put in; is that right? 11:34:10

21           A    Correct.

22           Q    Okay. And so why did you make that change?

23           A    Well, I believe, as we had discussed, the  
24           focus on the first draft was primarily in the  
25           adolescent age and later, and the second draft was 11:34:23

1 expanded slightly to include consideration of the  
2 prepubertal athlete. And since sport -- gender --  
3 or sex stratification in youth teams is still widely  
4 prevalent, they altered those words.

5 Q Are you providing an expert opinion in this 11:34:50  
6 case about transgender girls and women who never go  
7 through endogenous puberty as a result of puberty  
8 blockers followed by gender-affirming hormones?

9 MR. FRAMPTON: Objection; form.

10 THE WITNESS: Can you -- you ask that one 11:35:07  
11 more time?

12 BY MR. BLOCK:

13 Q Yeah. So are you providing an expert  
14 report -- excuse me, I'll say it again.

15 Are you providing an expert opinion in this 11:35:14  
16 case about transgender girls and women who never go  
17 through endogenous puberty as a result of taking  
18 puberty blockers followed by gender-affirming  
19 hormones?

20 MR. FRAMPTON: Same objection. 11:35:29

21 Go ahead.

22 THE WITNESS: So to the extent that they are  
23 prepubertal biological males, yes.

24 BY MR. BLOCK:

25 Q How about to the extent that they have 11:35:36

1 received puberty blockers followed by  
2 gender-affirming hormones to stimulate the  
3 equivalent of a typically female puberty?

4 MR. FRAMPTON: Objection; form.

5 THE WITNESS: My opinion in this case extends 11:35:51  
6 to sports safety issues in both the prepubertal and  
7 the pubertal population.

8 BY MR. BLOCK:

9 Q Okay. Does it address safety issues of the  
10 participation of transgender girls and women who 11:36:11  
11 receive puberty blockers and then receive  
12 gender-affirming hormone therapy that has effects on  
13 bone and muscle structure and causes them to  
14 develop, you know, typically female hips and -- and  
15 things like that? 11:36:26

16 MR. FRAMPTON: Objection to form.

17 MR. TRYON: Objection; form.

18 THE WITNESS: That's -- that's a complex  
19 question. Can you unpack that a little bit?

20 BY MR. BLOCK: 11:36:39

21 Q Sure. So you, so far -- in response to my  
22 questions about people who have blockers, you've  
23 equated transgender girls who have blockers to  
24 prepubertal boys and someone who has -- a  
25 transgender girl who has puberty blockers and then 11:36:52

1 receives gender-affirming hormones, you know,  
2 stimulates a lot of other changes that prepubertal  
3 boys don't have; correct?

4 MR. FRAMPTON: Objection to form.

5 THE WITNESS: I don't -- 11:37:05

6 MR. FRAMPTON: Go ahead.

7 THE WITNESS: I don't think that that's been  
8 widely looked at. I know that there's -- I -- I  
9 don't think that that's been widely looked at or  
10 extensively looked at, as to what the effects of 11:37:16  
11 that treatment would be on athletic performance.

12 BY MR. BLOCK:

13 Q Are you providing an expert opinion on what  
14 the effects of that treatment would be on safety?

15 MR. FRAMPTON: Object to the form. 11:37:36  
16 Go ahead.

17 THE WITNESS: I'm providing an opinion on the  
18 potential effects on safety of a biological male,  
19 even at age 10 or 11, pick your age, of crossing  
20 over into a woman's sport and participating in 11:37:53  
21 contact and collision sports.

22 BY MR. BLOCK:

23 Q All right. That's not the answer to my  
24 question. I -- I asked are you providing an expert  
25 opinion on the safety of -- of some -- a transgender 11:38:03

1 girl who has received blockers and then  
2 gender-affirming hormones participating on girls'  
3 sports teams.

4 A Am I -- I -- I am providing an opinion on the  
5 potential safety issues of a hypothetical individual 11:38:39  
6 like this participating on girls' sport team --  
7 girls' sports teams, yes.

8 Q What -- what's your basis for providing an  
9 expert opinion regarding a transgender girl who has  
10 received blockers and then gone on to receive 11:38:57  
11 gender-affirming hormones?

12 A That would have to do with whether or not  
13 there are differences between the sexes at the time  
14 of puberty.

15 Q Well, I'm talking about someone who has 11:39:21  
16 received blockers but then received gender-affirming  
17 hormones to stimulate the equivalent of a typically  
18 female puberty.

19 Are you -- what's your basis for providing an  
20 expert opinion on the safety risks of that person 11:39:39  
21 participating on girls' sports?

22 MR. TRYON: Objection.

23 THE WITNESS: To my --

24 MR. FRAMPTON: Objection to form.

25 ///

1 BY MR. BLOCK:

2 Q You can answer.

3 A There's not extensive research looking at the  
4 situation that you're talking about.

5 Q So --

11:39:59

6 A The effect of sports -- of gender-affirming  
7 hormones on sports participation.

8 Q So if there's not a lot of research, do you  
9 have a basis for offering an expert opinion about  
10 it?

11:40:16

11 MR. FRAMPTON: Same objection.

12 Go ahead.

13 THE WITNESS: My opinion is grounded in an  
14 understanding of what plays into injury risk and  
15 differences that exist between the sexes.

11:40:30

16 BY MR. BLOCK:

17 Q Do you know what differences exist for --  
18 between a cisgender woman and a transgender woman  
19 who received puberty blockers followed by  
20 gender-affirming hormones?

11:40:49

21 MR. TRYON: Objection to form.

22 THE WITNESS: My -- my understanding is there  
23 is retained differences in lean body mass between  
24 them.

25 ///



1 BY MR. BLOCK:

2 Q What's that understanding based on?

3 A The one study I'm familiar with that looked  
4 at that, which was authored by Klaver.

5 Q And that's a study that you didn't cite in 11:41:10  
6 your report; correct?

7 A Correct.

8 Q You only looked at that study for the first  
9 time in preparing for this deposition; correct?

10 MR. FRAMPTON: Objection to the form. 11:41:22

11 BY MR. BLOCK:

12 Q You can answer.

13 A I looked at it in preparation for this  
14 deposition, yes.

15 Q So you looked at it for the first time after 11:41:37  
16 you had already submitted your report; correct?

17 A Correct.

18 Q And is it your understanding that the people  
19 in that study received puberty blockers at the  
20 beginning of Tanner II? 11:41:49

21 A Around -- I believe around age 13, 14.

22 Q And as a medical doctor, what's your  
23 understanding of when Tanner II typically begins for  
24 boys?

25 A Again, I'm a sports medicine physician. I'm 11:42:05

1 not an endocrinologist.

2 Q Well --

3 MR. FRAMPTON: Did it not pick up his answer?

4 I thought he answered the -- there was no reaction

5 when he said an age, so I just wanted to make sure 11:42:27

6 it was picked up.

7 MR. BLOCK: It was not.

8 MR. FRAMPTON: Okay.

9 THE WITNESS: I said age 12.

10 BY MR. BLOCK: 11:42:34

11 Q Age 12.

12 Have you done any modeling of the safety

13 risks associated with prepubertal boys playing on

14 sports teams with prepubertal girls?

15 MR. FRAMPTON: Objection to the form. 11:42:57

16 Go ahead.

17 THE WITNESS: Define what you mean by

18 "modeling."

19 BY MR. BLOCK:

20 Q You discuss modeling of safety risks in your 11:43:08

21 report, don't you?

22 A Correct.

23 Q So that's what I mean by "modeling."

24 Have you conducted any modeling of the safety

25 risks of prepubertal boys playing on teams with 11:43:22

1 prepubertal girls?

2 A I'm not sure what you mean by modeling these  
3 risks. The -- the extent to which prepubertal kids  
4 do or don't fit into that model depends on whether  
5 there are measurable differences between the sexes 11:43:50  
6 in terms of things like speed or strength.

7 Q And so --

8 A To the extent that there are measurable  
9 differences noted between them, then, yes, the model  
10 applies. 11:44:13

11 Q But you haven't actually done that modeling,  
12 have you?

13 MR. FRAMPTON: Objection to the form.

14 THE WITNESS: I thought I answered that  
15 question. I'm not sure -- do you mean have I 11:44:22  
16 published data on that?

17 BY MR. BLOCK:

18 Q Not have you published it. Have you done it  
19 yourself? Have you plugged the values into  
20 equations and -- and come up with a model similar 11:44:35  
21 to, you know, rugby's model?

22 MR. FRAMPTON: Objection to the form.

23 Go ahead.

24 THE WITNESS: Have I taken a calculator and  
25 calculated this out with prepubertals? I'm not sure 11:44:56

1 I understand why that's necessary.

2 If -- if -- there either are or there aren't  
3 differences between the sexes in terms of variables  
4 that equate to athletic performance or -- or lead to  
5 athletic performance, and if there are, then 11:45:19  
6 absolute injury risk can be increased.

7 BY MR. BLOCK:

8 Q So you don't -- no -- no matter how small a  
9 difference is, you don't think that's relevant to  
10 assessing, you know, safety risks? 11:45:33

11 MR. FRAMPTON: Object to the form.

12 THE WITNESS: I'm not sure what you're asking  
13 there, but -- but measurable differences can lead to  
14 increased safety risk, yes.

15 BY MR. BLOCK: 11:45:55

16 Q World Rugby actually calculated a -- a model  
17 of the safety risks of an average man playing rugby  
18 with an average woman; correct?

19 A Correct. That was part of their process.

20 Q Okay. And so they went through the steps of 11:46:12  
21 actually calculating it; correct?

22 A They did.

23 Q Okay. And -- but you did not go through  
24 those steps for purposes of calculating a safety  
25 risk of an -- prepubertal boys playing on teams with 11:46:26

1 prepubertal girls; right?

2 MR. FRAMPTON: Same objection.

3 THE WITNESS: Well, I think I speak to the --

4 in the paper as to how that risk might be

5 calculated. 11:46:39

6 BY MR. BLOCK:

7 Q Yeah, you -- you spoke to how it might be

8 calculated, but you didn't actually calculate it;

9 correct?

10 A I'm not -- I'm not sure where you're going 11:46:46

11 with that, but --

12 Q I just need a "yes" or "no" answer whether

13 you did it or not.

14 MR. FRAMPTON: Object to the form.

15 Go ahead. 11:46:55

16 BY MR. BLOCK:

17 Q You did not actually go through the steps of

18 calculating the model of the safety risk for

19 prepubertal boys playing with prepubertal girls?

20 A I did not take, for example, an 11:47:02

21 eight-year-old male and -- his mass and speed into a

22 force equation and then compare it to another

23 eight-year-old female. I'm not sure what that

24 was -- would accomplish.

25 Q Okay. So how -- so you don't have the -- the 11:47:19

1 MR. FRAMPTON: That was probably garbled, but  
2 I object to the form.

3 Go ahead and answer the question.

4 THE WITNESS: I do not.

5 BY MR. BLOCK: 12:50:44

6 Q Do you know whether the participation of this  
7 plaintiff in sports would pose any more of a safety  
8 risk than the participation of any other cisgender  
9 girl in sports?

10 MR. FRAMPTON: Object to the form. 12:51:02

11 THE WITNESS: Because I don't know the  
12 particulars of this person, I certainly could not  
13 speak to that.

14 BY MR. BLOCK:

15 Q Are you providing an -- expert testimony at 12:51:15  
16 all regarding safety risks from cross-country?

17 A I was asked to provide a report on safety  
18 risks as relates to participation in -- of athletes  
19 in contact in collision sports, but that's  
20 defined -- the -- the nature of that is defined 12:51:42  
21 within my paper.

22 Q Okay. So it does not -- so contact and  
23 collision sports does not include cross-country;  
24 correct?

25 A That's correct. 12:51:52

1 Q And contact and collision sports doesn't  
2 include track and field; correct?

3 A Correct.

4 Q Okay. Do you -- would it be fair to say that  
5 the effects of male-to-female hormones on important 12:52:27  
6 determinants of athletic performance still remain  
7 largely unknown?

8 A I -- I -- I didn't hear -- the effects of  
9 male and female hormones on what?

10 Q On determinants of athletic performance 12:52:42  
11 remain largely unknown.

12 MR. FRAMPTON: Object to the form.

13 Go ahead.

14 THE WITNESS: What do you mean by "largely  
15 unknown"? 12:52:52

16 BY MR. BLOCK:

17 Q I don't know. Do you think it's a fair  
18 statement, that they remain largely unknown?

19 MR. FRAMPTON: Object to the form.

20 THE WITNESS: I think that there's good 12:53:04  
21 evidence that testosterone has a significant impact  
22 on performance.

23 BY MR. BLOCK:

24 Q But do you think the effects of lowering  
25 circulating testosterone on athletic performance 12:53:17



Team Results Management

# Mountain Hollar MS Invitational

MS

 OFFICIAL

 Thu, Sep 2, 2021

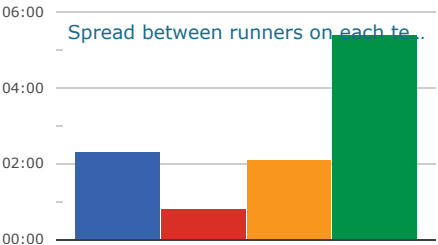
 University High School

72 Followers [Sign In to Follow](#)

← Womens 3,200 Meters Junior Varsity

All Grades ▾ All Teams ▾ All Divisions ▾  Other Filters ▾  Highlighter

Team Spread ▾



First Athlete 1 ▾

Last Athlete 5 ▾

Official Team Scores

1. Suncrest	29
2. South (Morgantown)	39
3. Mountaineer (Morgantown)	78
4. Bridgeport	99
1. 8 Stella Bleech	15:54.3 South (Morgantown)
2. 8 Chloe Sickles	16:00.4 South (Morgantown)
3. 6 Emma Zhou	16:12.8 Suncrest
4. 7 Janie Gilchrest	16:14.5 Suncrest
5. 8 Mia McCutcheon	16:19.7 Suncrest
6. 7 Linsey Kramer	16:41.3 East Fairmont
7. 8 Maliah Dalton	16:41.8 South (Morgantown)
8. 7 Maddie Fritsch	16:48.6 Mountaineer (Morgantown)
9. 6 JJ Monroy	16:53.8 Suncrest
10. 7 Paige Snyder	16:55.4 East Fairmont
11. 7 Olivia Lupo	17:00.9 Suncrest
12. 6 Chelsea Payne	17:02.9 Braxton County
13. 7 Graylee Linville	17:09.8 Bridgeport
14. 7 Lauren Krantz	17:10.6 Suncrest
15. 7 Elizabeth Esposito	17:11.9 Suncrest
16. 7 Ayla McCasi	17:13.9 South (Morgantown)
17. 7 Kylie Cline	17:20.7 Covenant Christian
18. 8 Milley Dong	17:21.8 Suncrest
19. 8 Adrienne Reger	17:25.3 Mountaineer (Morgantown)
20. 7 Grayson Martucci	17:27.8 Suncrest
21. 6 Anna Houde	17:32.8 Suncrest
22. 6 Emma Kniceley-See	17:34.4 Bridgeport
23. 6 Kelea Anderson	17:38.3 Suncrest
24. 6 Maria Strager	17:41.9 Mountaineer (Morgantown)
25. 7 A. Monroe	17:49.4 Suncrest
26. 8 Allie Myers	17:49.6 Suncrest
27. 8 Brynn Lewis	18:01.1 Suncrest
28. 8 Emily McDonald	18:12.6 South (Morgantown)
29. 8 Samantha Zizzi	18:16.1 South (Morgantown)
30. 6 Arianna Howell	18:17.7 South (Morgantown)
31. 8 Anna McBee	18:25.3 Mountaineer (Morgantown)
32. 6 Maggie Bailey	18:30.3 Suncrest
33. 8 Avery Dickerson	18:33.8 South (Morgantown)
34. 6 Elaina Beard	18:42.9 South (Morgantown)
35. 8 Nataline Wolfe	18:54.2 Mountaineer (Morgantown)
36. 6 Braydan Whitesel	18:59.8 Braxton County
37. 8 Maya Ramsey-Murry	19:06.3 Suncrest
38. 7 Hannah Staley	19:28.2 Suncrest
39. 6 Emily Liu	19:53.9 Suncrest
40. 7 Maria Abelsayed	20:00.9 Suncrest



4/20/22, 8:26 PM

Case 2:21-cv-00316 Document 289-34 Filed 04/21/22 Page 3 of 3 PageID #: 13810

41. 7 Zuzanna Michalski	20:14.3 Mountaineer (Morgantown)
42. 7 Addison Berg	20:28.6 Covenant Christian
43. 8 Payton Janssen	20:43.7 Bridgeport
44. 6 Rylee Lemley	20:52.8 Mountaineer (Morgantown)
45. 6 Sara Minchau	20:54.5 Mountaineer (Morgantown)
46. 0 Brigid Wilson	20:56.9 Suncrest
47. 7 Ashlyn Poach	21:42.5 St. Francis Central Catholic
48. 6 Margaret (Maggie) Cable	21:46.1 Bridgeport
49. 6 Claire Jones	22:02.3 South (Morgantown)
50. 6 Alden Owen	22:24.4 St. Francis Central Catholic
51. 6 Becky Pepper-Jackson	22:33.9 Bridgeport
52. 8 Faith Noss	22:42.7 Central Preston
53. 7 Caitlin Murray	22:55.7 Bridgeport
54. 7 Alexis Thomas	22:55.9 South (Morgantown)
55. 7 Elsa Meyer	23:48.1 Suncrest
56. 8 Shea Lingo	23:52.8 Suncrest
57. 8 Macy Giles	24:12.1 South (Morgantown)
58. 7 Lilah Allison	24:23.5 Suncrest
59. 6 Peyton Ice	24:34.7 East Fairmont
60. 7 Elizaveta Abbitt	24:51.2 St. Francis Central Catholic
61. 8 Keirston Pugh	24:55.9 Bridgeport
62. 7 Olivia Markley	25:03.8 East Fairmont
63. 7 Baylee Yost	25:29.2 Suncrest
64. 7 Amelia Fisher	26:47.8 Mountaineer (Morgantown)
65. 6 Emma Sherwin	26:50.2 Mountaineer (Morgantown)
66. 6 Havanna Davis	30:26.8 Suncrest

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Team Results Management

# Doddridge Invitational

MS

0 Followers

Sign In to Follow




📅 Thu, Sep 16, 2021

📍 Doddridge County Park


← Womens 3,000 Meters Middle School

All Grades ▾ All Teams ▾ All Divisions ▾ ⌵ Other Filters ▾ ✎ Highlighter

Official Team Scores		—
1.	Pleasants County	61
2.	Braxton County	76
3.	East Fairmont	110
4.	Tyler Consolidated	122
5.	Warren Local	138
6.	Mountaineer (Clarksburg)	166
7.	Taylor County	197
8.	West Fairmont	210
9.	Bridgeport	213
10.	Wirt County	273
11.	Buckhannon-Upshur	281
12.	Ritchie County	286
13.	Washington Irving	320
14.	Lincoln	385
15.	Westwood	427



### Charts & Hypothetical Scores

Did you know meets hosted by  Site Supporters display additional analysis tools?

Are you a meet host? [Learn About Supporter Benefits](#)

1.	7 Anna Bennett	12:00.24 Pleasants County
2.	8 Kailee Haymond	12:31.40 East Fairmont
3.	8 Addison Lloyd	12:59.85 Braxton County
4.	7 Makenna Martin	13:13.89 Tyler Consolidated
5.	8 Tillie Cinalli	13:20.28 West Fairmont
6.	8 Bailey Pritt	13:25.51 Braxton County
7.	7 Marley Sias	13:25.77 Doddridge County
8.	7 Maddie Smith	13:33.78 Pleasants County
9.	6 Annabelle Skidmore	13:34.41 East Fairmont
10.	7 Julia Angiulli	13:37.77 Mountaineer (Clarksburg)
11.	8 Bentlee Williams	13:39.15 Ritchie County
12.	6 Avry Bennett	13:41.59 Pleasants County
13.	8 Kaitlyn Key	13:45.11 Mountaineer (Clarksburg)
14.	7 Mackinzey Budner	13:46.29 Braxton County
15.	7 Maddy Cox	13:47.57 Tyler Consolidated
16.	7 Ella Egidi	13:50.85 West Fairmont
17.	8 Sophia Austin	14:03.10 Taylor County
18.	8 Kaelyn Robinson	14:04.38 Wirt County
19.	6 Mariah Whitlock	14:06.40 Pleasants County
20.	8 Hollyn Reed	14:07.19 Warren Local
21.	8 Sophie Stuck	14:10.78 East Fairmont
22.	6 Hayden Henderson	14:13.00 Bridgeport
23.	8 Payton Trent	14:14.16 Doddridge County
24.	8 Ashley McBrayer	14:25.36 Bridgeport
25.	7 Leah Payne	14:29.83 Braxton County
26.	7 Savana Burd	14:33.84 Pleasants County
27.	8 Abby Whited	14:40.57 Warren Local
28.	7 Aslee Pate	14:43.89 Warren Local
29.	7 Madison Altman	14:52.44 Washington Irving
30.	7 Lily Dillaman	15:05.31 Tyler Consolidated
31.	8 Brea Lathon	15:15.32 Mountaineer (Clarksburg)
32.	7 Camryn Westbrook	15:16.49 Tyler Consolidated
33.	6 Reece Carpenter	15:17.18 Braxton County
34.	8 Natalie Cartwright	15:18.76 Taylor County
35.	7 Suzanna Whipkey	15:19.69 Warren Local

4/21/22, 7:04 PM

Case 2:21-cv-00316 Document 289-35 Filed 04/21/22 Page 3 of 4 PageID #: 13813

36. 7 Kylie Cline 15:20.97 Covenant Christian  
 37. 6 Madison Knabenshue 15:21.68 Buckhannon-Upshur  
 38. 8 Cate Edgell 15:25.72 Warren Local  
 39. 8 Cassidy McCarthy 15:29.05 Warren Local  
 40. 7 Avery Moore 15:30.57 West Fairmont  
 41. 7 Paige Snyder 15:31.35 East Fairmont  
 42. 6 Natalie Beltner 15:36.94 Taylor County  
 43. 8 Annika Shuman 15:39.36 Mountaineer (Clarksburg)  
 44. 7 Nevaeh Bolin 15:40.56 Ritchie County  
 45. 7 Piper Woofter 15:41.55 East Fairmont  
 46. 6 Liza Saas 15:43.62 Washington Irving  
 47. 8 Absidee Carpenter 15:45.71 East Fairmont  
 48. 7 Ryleigh Bills 15:46.26 East Fairmont  
 49. 6 Andi Fiber 15:49.01 Tyler Consolidated  
 50. 6 Addison Sole 15:52.64 Taylor County  
 51. 6 Addi McGrady 15:53.95 Pleasants County  
 52. 8 Lauren Pritt 15:54.66 Braxton County  
 53. 7 Audrey Duckworth 15:57.28 Braxton County  
 54. 7 Savannah Holden 15:58.87 South Harrison  
 55. 8 Chloe Marsh 15:59.26 Bridgeport  
 56. 8 Issabella Speece 16:00.13 Wirt County  
 57. 6 Haley Woody 16:12.03 Buckhannon-Upshur  
 58. 7 Jenna Willey 16:12.53 Lincoln  
 59. 8 Lilly Haught 16:18.77 Tyler Consolidated  
 60. 6 LenaRose Walker 16:21.19 Buckhannon-Upshur  
 61. 8 Olivia Pursley 16:24.74 Wirt County  
 62. 7 Linsey Kramer 16:27.30 East Fairmont  
 63. 6 Destinee Gray 16:31.57 Pleasants County  
 64. 6 Olivia Kimball 16:32.52 Pleasants County  
 65. 7 Jordyn McIntyre 16:40.49 Bridgeport  
 66. 6 Emma Kniceley-See 16:40.90 Bridgeport  
 67. 8 Grace Dearth 16:46.01 Warren Local  
 68. 7 Adalyn Moreland 16:47.91 Warren Local  
 69. 6 Emma Ahmed 16:50.77 Bridgeport  
 70. 7 Peyton Stevens 16:51.80 Taylor County  
 71. 8 Lily Cross 16:52.96 Wirt County  
 72. 6 Chelsea Payne 16:56.79 Braxton County  
 73. 6 Isabella Eddy 16:58.08 Lincoln  
 74. 7 Jahna Brown 16:59.20 Tyler Consolidated  
 75. 7 Anya Morehead 17:02.83 Buckhannon-Upshur  
 76. 7 Rania Singh 17:03.24 Warren Local  
 77. 6 Anna Wycoff 17:05.47 East Fairmont  
 78. 7 Avery Kessler 17:13.69 South Harrison  
 79. 7 Zoey Bunner 17:20.92 Ritchie County  
 80. 8 Kenna Keener 17:25.26 Taylor County  
 81. 7 Lauren Brown 17:25.54 South Harrison  
 82. 6 MillieCate Currey 17:25.73 Bridgeport  
 83. 6 Chloe Lewis 17:25.91 Buckhannon-Upshur  
 84. 8 Kamryn Watkins 17:26.10 Westwood  
 85. 7 Brooklyn Davis 17:26.62 Pleasants County  
 86. 7 Ayla Lilly 17:36.60 West Fairmont  
 87. 7 Graylee Linville 17:39.26 Bridgeport  
 88. 6 Colleen Freed 17:41.70 Ritchie County  
 89. 6 Isabella Bowers 17:48.16 Buckhannon-Upshur  
 90. 7 Rayonna Cain 17:50.94 Mountaineer (Clarksburg)  
 91. 7 Autumn Cecil 17:52.63 Pleasants County  
 92. 6 Ciarra Spring 17:53.10 Taylor County  
 93. 7 Adreona Moore 17:55.20 Washington Irving  
 94. 7 Annelise Mace 18:01.32 Bridgeport  
 95. 8 Paiton Thompson 18:05.51 Bridgeport  
 96. 8 Novalee Bennett 18:06.60 Braxton County  
 97. 8 Bella Casto 18:11.22 Westwood  
 98. 6 Alexis Buffey 18:15.84 West Fairmont  
 99. 6 Lyla Garcia 18:30.05 West Fairmont  
 100. 6 Reagan Sturgeon 18:41.15 Pleasants County  
 101. 7 Olivia Roberts 18:44.28 Tyler Consolidated  
 102. 7 Sophia Fox 18:47.12 Buckhannon-Upshur  
 103. 8 Cynthia Wigel 19:10.95 Wirt County  
 104. 7 Emily Brackman 19:15.00 Washington Irving  
 105. 7 Addison Berg 19:27.35 Covenant Christian  
 106. 8 Payton Janssen 19:35.99 Bridgeport  
 107. 7 Kate Urso 19:37.61 Notre Dame  
 108. 8 Regan Hardway 19:42.54 West Fairmont  
 109. 6 Katrina Guthrie 19:46.20 Lincoln  
 110. 6 Margaret (Maggie) Cable 19:49.23 Bridgeport  
 111. 6 Ainsley Alexander 19:54.42 Taylor County  
 112. 6 Alyena Mcle 19:57.22 Buckhannon-Upshur  
 113. 6 Kaitlin Davis 19:57.95 Buckhannon-Upshur  
 114. 8 Jacelyn Niethamer 20:19.84 Westwood  
 115. 8 Ava Scolapio 20:34.53 Washington Irving  
 116. 8 Erika Church 20:35.32 Lincoln  
 117. 8 Giana Armistead 20:39.78 West Fairmont  
 118. 6 Amelia Weekley 20:44.27 Pleasants County  
 119. 7 Marley Rider 21:00.11 West Fairmont  
 120. 8 Natalie Klemm 21:03.86 Warren Local  
 121. 7 Bella Allen 21:10.10 Pleasants County  
 122. 8 Breanna Cutright 21:14.63 Mountaineer (Clarksburg)  
 123. 6 Becky Pepper-Jackson 21:50.47 Bridgeport

124. 7 Olivia Markley	21:57.35 East Fairmont
125. 7 Claire McElwayne	22:01.21 Notre Dame
126. 7 Mercy Frase	22:02.14 South Harrison
127. 6 Makinsey Jeffers	22:02.35 Pleasants County
128. 8 Keirsten Pugh	22:06.93 Bridgeport
129. 6 Heaven Pittman	22:09.28 Tyler Consolidated
130. 6 Annaleigh Pierce	22:10.80 Lincoln
131. 7 Caitlin Murray	22:25.51 Bridgeport
132. 8 Ali Wilfong	22:27.85 Taylor County
133. 6 Raley Cochran	22:42.76 Lincoln
134. 6 Peyton Ice	22:46.22 East Fairmont
135. 6 Taylor Krolick	23:11.16 Ritchie County
136. 8 Autumn Wolfe	23:18.39 Westwood
137. 8 Kate Gaines	23:26.56 Westwood
138. 6 MaraBeth Hines	23:49.05 Buckhannon-Upshur
139. 6 Jordan Cox	23:55.91 Taylor County
140. 6 Arabella Jones	24:06.51 Taylor County
141. 7 Cailee Singh	24:24.88 Lincoln
142. 6 Haley Cross	24:54.03 Wirt County
143. 8 Elizabeth Conley	25:08.96 Washington Irving
144. 8 Andrea Huffman	25:16.94 Ritchie County
145. 6 Skylar Hayes	25:36.46 Lincoln
146. 8 Aaliyah Dodrill	25:40.69 Lincoln
147. 6 Lillie Nardella	27:40.92 Notre Dame
148. 6 Bella Yates	28:48.53 Bridgeport
149. 6 Zoe Fisher	29:16.46 Tyler Consolidated
150. 6 Sierra Perdue	30:00.69 Wirt County



Case 2:21-cv-00316 Document 289-39 Filed 04/21/22 Page 2 of 16 PageID #: 13861

Sarah,

Per our discussion.

Thank you,  
Melissa

Melissa J. White  
Chief Counsel  
Committee on Education  
West Virginia House of Delegates  
Room 432M  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**From:** Melissa White  
**Sent:** Thursday, March 11, 2021 9:53 AM  
**To:** Bernie Dolan <[bernie.dolan@wvssac.org](mailto:bernie.dolan@wvssac.org)>; Bernie Dolan <[bdolan@k12.wv.us](mailto:bdolan@k12.wv.us)>  
**Subject:** Transgender participation in secondary schools bill

Bernie,

Attached is a draft of an originating bill regarding transgender participation in sports. I kept it short. There are obviously certain things that would need to be handled in a rule, unless you have language that you would like to see in the bill. Please let me know your thoughts and if there are any unintended consequences. The Chairman does not want to keep girls from participating in boys sports when there are not girls teams.

Thanks,  
Melissa

Melissa J. White  
Chief Counsel  
Committee on Education  
West Virginia House of Delegates  
Room 432M  
1900 Kanawha Boulevard, East  
Charleston, WV 25305



# 2021 Green Book

*Summary of Public Education  
Bills Enacted During the 2021  
Regular Session*





**West Virginia Board of Education  
2021-2022**

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**Thomas W. Campbell, CPA, Vice President**  
**F. Scott Rotruck, Financial Officer**

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**Chancellor**  
**West Virginia Higher Education Policy Commission**  
**West Virginia Council for Community and Technical College Education**

**W. Clayton Burch, Ex Officio**  
**State Superintendent of Schools**  
**West Virginia Department of Education**

## CODE CHANGES

Code	Bill	Code	Bill	Code	Bill	Code	Bill
§3-8-12	HB 2009	§18-5-16	SB 375	§18-9B-8	HB 3177	§18-31-4	HB 2013
§5-10-19	HB 3191	§18-5-18e	HB 3177	§18-9B-9	HB 3177	§18-31-5	HB 2013
§11-1C-10	HB 2581	§18-5-43	HB 3177	§18-9B-10	HB 3177	§18-31-6	HB 2013
§11-3-15c	HB 2581	§18-5-45a	SB 11	§18-9B-11a	HB 3177	§18-31-7	HB 2013
§11-3-15f	HB 2581	§18-5G-1	HB 2012	§18-9B-12	HB 3177	§18-31-8	HB 2013
§11-3-15h	HB 2581	§18-5G-2	HB 2012	§18-9B-13	HB 3177	§18-31-9	HB 2013
§11-3-15l	HB 2581	§18-5G-4	HB 2012	§18-9B-14	HB 3177	§18-31-10	HB 2013
§11-3-23	HB 2581	§18-5G-5	HB 2012	§18-9B-15	HB 3177	§18-31-11	HB 2013
§11-3-23a	HB 2581	§18-5G-6	HB 2012	§18-9B-17	HB 3177	§18-31-12	HB 2013
§11-3-24	HB 2581	§18-5G-9	HB 2012	§18-9B-18	HB 3177	§18-31-13	HB 2013
§11-3-24a	HB 2581	§18-5G-10	HB 2012	§18-9B-19	HB 3177	§18A-2-16	HB 2267
§11-3-24b	HB 2581	§18-5G-11	HB 2012	§18-9B-20	HB 3177	§18A-2-25	HB 3293
§11-3-25	HB 2581	§18-5G-13	HB 2012	§18-9B-21	HB 3177	§18A-3-1	HB 2029
§11-3-25a	HB 2581	§18-5G-14	HB 2012	§18-9D-15	HB 2906	§18A-3-2a	SB 14
§11-3-32	HB 2581	§18-5G-15	HB 2012	§18-10H-4	HB 3177	§18A-3-2a	HB2029
§11-10A-1	HB 2581	§18-7A-13a	HB 3191	§18-30A-1	HB 2001	§18A-4-2	SB 680
§11-10A-7	HB 2581	§18-7A-36	HB 3177	§18-30A-2	HB 2001	§18A-4-8	HB 2145
§11-10A-8	HB 2581	§18-8-1	HB 2013	§18-30A-3	HB 2001	§18A-4-8a	HB 2145
§11-10A-10	HB 2581	§18-8-1a	HB 2785	§18-30A-4	HB 2001	§18A-4-16	HB 3266
§11-10A-19	HB 2581	§18-8-11	SB 431	§18-30A-5	HB 2001	§21-1A-4	HB 2009
§11-21-12m	HB 2001	§18-9-3a	SB 651	§18-30A-6	HB 2001	§21-5-1	HB 2009
§11-21-25	HB 2001	§18-9A-6a	HB 3177	§18-30A-7	HB 2001	§21-6-3	SB 435
§11-24-10a	HB 2001	§18-9A-7	HB 3177	§18-30A-8	HB 2001	§21-6-4	SB 435
§17B-2-7	SB 356	§18-9A-8a	HB 3177	§18-30A-9	HB 2001	§21-6-5	SB 435
§18-2-5c	HB 3293	§18-9A-15	HB 2852	§18-30A-10	HB 2001	§21-6-10	SB 435
§18-2-5d	HB 3177	§18-9A-16	HB 3177	§18-30A-11	HB 2001	§49-2-113	SB 89
§18-2-9	SB 636	§18-9A-25	HB 2013	§18-30A-12	HB 2001	§55-19-1	SB 277
§18-2-13b	HB 3177	§18-9B-1	HB 3177	§18-30A-13	HB 2001	§55-19-2	SB 277
§18-2-24	HB 3177	§18-9B-2	HB 3177	§18-30A-14	HB 2001	§55-19-3	SB 277
§18-2-29	HB 3177	§18-9B-3	HB 3177	§18-30A-15	HB 2001	§55-19-4	SB 277
§18-2-35	HB 3177	§18-9B-4	HB 3177	§18-30A-16	HB 2001	§55-19-5	SB 277
§18-2E-4a	HB 3177	§18-9B-5	HB 3177	§18-31-1	HB 2013	§55-19-6	SB 277
§18-3-9b	HB 3177	§18-9B-6	HB 3177	§18-31-2	HB 2013	§55-19-7	SB 277
§18-4-12	HB 3177	§18-9B-6a	HB 3177	§18-31-3	HB 2013	§55-19-8	SB 277
§18-5-15g	HB 2791	§18-9B-7	HB 3177			§55-19-9	SB 277

Legend for this page:

- **Black** designates amended code.
- **Red** designates stricken code.
- **Green** designates new code.



## TABLE OF CONTENTS

### 2021 Regular Legislative Session

Senate Bill 11: Declaring work stoppage or strike by public employees to be unlawful.....	1
<i>Adds: §18-5-45a</i>	
Senate Bill 14: Providing for additional options for alternative certification for teachers.....	1
<i>Amends: §18A-3-2a</i>	
Senate Bill 89: Exempting certain kindergarten and preschool programs offered by private schools from registration requirements .....	2
<i>Amends: §49-2-113</i>	
Senate Bill 277: Creating COVID-19 Jobs Protection Act .....	2
<i>Adds: §55-19-1; §55-19-2; §55-19-3; §55-19-4; §55-19-5; §55-19-6; §55-19-7; §55-19-8; §55-19-9</i>	
Senate Bill 356: Allowing for written part of drivers' exam given in high school drivers' education course .....	3
<i>Amends: §17B-2-7</i>	
Senate Bill 375: Relating to county boards of education policies for open enrollment.....	3
<i>Amends: §18-5-16</i>	
Senate Bill 431: Relating to school attendance notification requirements to DMV.....	3
<i>Amends: §18-8-11</i>	
Senate Bill 435: Requiring county superintendents to authorize certain school principals or administrators at nonpublic schools to issue work permits for enrolled students.....	4
<i>Amends: §21-6-3; §21-6-4; §21-6-5; §21-6-10</i>	
Senate Bill 636: Requiring certain history and civics courses be taught in schools.....	4
<i>Amends: §18-2-9</i>	
Senate Bill 651: Allowing county boards of education to publish financial statements on website.....	5
<i>Amends: §18-9-3a</i>	
Senate Bill 680: Allowing State Superintendent of Schools define classroom teachers certified in special education.....	6
<i>Amends: §18A-4-2</i>	
House Bill 2001: Relating generally to creating the West Virginia Jumpstart Savings Program.....	6
<i>Adds: §11-21-12m; §11-21-25; §11-24-10a; §18-30A-1; §18-30A-2; §18-30A-3; §18-30A-4; §18-30A-5; §18-30A-6; §18-30A-7; §18-30A-8; §18-30A-9; §18-30A-10; §18-30A-11; §18-30A-12; §18-30A-13; §18-30A-14; §18-30A-15; §18-30A-16</i>	
House Bill 2009: Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities.....	8
<i>Add: §7-5-25</i>	
<i>Amends: §8-5-12; §12-3-13b; §18A-4-9; §21-5-1; §21-5-3; §45A-2-116</i>	

House Bill 2012: Relating to Public Charter Schools.....	8
<i>Amends: §18-5G-1; §18-5G-2; §18-5G-4; §18-5G-5; §18-5G-6; §18-5G-9; §18-5G-10; §18-5G-11</i>	
<i>Adds: §18-5G-13; §18-5G-14; §18-5G-15</i>	
House Bill 2013: Relating to the Hope Scholarship Program.....	10
<i>Amends: §18-8-1</i>	
<i>Adds: §18-9A-25; §18-31-1; §18-31-2; §18-31-3; §18-31-4; §18-31-5; §18-31-6; §18-31-7; §18-31-8; §18-31-9; §18-31-10; §18-31-11; §18-31-12; §18-31-13</i>	
House Bill 2029: Relating to teacher preparation clinical experience programs.....	11
<i>Amends: §18A-3-1; §18A-3-2a</i>	
House Bill 2145: Relating to student aide class titles .....	12
<i>Amends: §18A-4-8; §18A-4-8a</i>	
House Bill 2267: Establishing an optional bus operator in residence program for school districts.....	12
<i>Amends: §18A-2-15</i>	
House Bill 2581: Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property.....	13
<i>Amends: §11-1 C-10; §11-3-15c; §11-3-15 f; §11-3-15h; §11-3-15i; §11-3-23; §11-3-23a; §11-3 -24; §11-3-24a; §11- 3-25a; §11-3-32; §11-10 A-1; §11-10A-7; §11-10A-8; §11-10A-10; §11-10A-19</i>	
<i>Repeal: §11-3 -24 b; §11-3-25</i>	
House Bill 2785: Relating to public school enrollment for students from out of state.....	14
<i>Amends: §18-8-1a</i>	
House Bill 2791: Relating to enrollment and costs of homeschooled or private school students at vocational schools .....	14
<i>Adds: §18-5-15g</i>	
House Bill 2852: Relating to distribution of the allowance for increased enrollment.....	15
<i>Amends: §18-9A-15</i>	
House Bill 2906: Relating to the School Building Authority's allocation of money.....	15
<i>Amends: §18-9D-15</i>	
House Bill 3177: Removing expired, outdated, inoperative and antiquated provisions and report requirements in education.....	16
<i>Repeals: §18-2-5d; §18-2-13b; §18-2-24; §18-2-29; §18-2-35; §18-2E-4a; §18-3-9b; §18-4-12; §18-5-18e; §18-5-43; §18-7A-36; §18-9A-8a; §18-9B-11a; §18-10H-4</i>	
<i>Amends: §18-9A-6a; §18-9A-7; §18-9A-16; §18-9B-1; §18-9B-2; §18-9B-3; §18-9B-4; §18-9B-5; §18-9B-6; §18-9B-6a; §18-9B-7; §18-9B-8; §18-9B-9; §18-9B-10; §18-9B-12; §18-9B-13; §18-9B-14; §18-9B-15; §18-9B-17; §18-9B-18; §18-9B-19; §18-9B-20; §18-9B-21</i>	

House Bill 3191: Requiring employers to send certain notifications when retirants are hired as  
temporary, part-time employees..... 16  
    *Amend: §5-10-19; §18-7A-13a*

House Bill 3266: Providing for termination of extracurricular contract upon retirement .....17  
    *Amends: §18A-4-16*

House Bill 3293: Relating to single-sex participation in interscholastic athletic events.....17  
    *Amends: §18-2-5c*

**Senate Bill 11: Declaring work stoppage or strike by public employees to be unlawful**

*Effective Date:* June 2, 2021

*Code Reference:* Adds: §18-5-45a

*WVDE Contact:* Heather Hutchens, General Counsel, Office of Legal Services

*Bill Summary:* The bill confirms that a work stoppage or strike by public employees, and specifically employees of a county board of education, is both unlawful and disruptive to the delivery of the constitutionally required thorough and efficient education. The bill outlines when an employee is participating in a concerted work stoppage, strike, or interruption of operations. This bill clarifies that an employee may not take personal leave to participate in a work stoppage/strike and clarifies that a county board may not utilize accrued or equivalent instruction time or alternate delivery models to cancel or make up lost days. The bill clarifies that the West Virginia Board of Education (WVBE) waiver process cannot be utilized to waive the employment term or minimum instructional term if the noncompliance is because of a work stoppage or strike. This bill clarifies participation is a ground for termination, but if the county does not terminate the employee, the employee's salary should be prorated to account for the absence.

**Senate Bill 14: Providing for additional options for alternative certification for teachers**

*Effective Date:* May 27, 2021

*Code Reference:* Amends: §18A-3-2a

*WVDE Contact:* Carla Warren, Director, Educator Development and Support

*Bill Summary:* The bill proposes an alternative certification pathway for individuals to obtain a professional teaching certificate. The bill sets forth four requirements that an individual must obtain to be eligible to receive a professional teaching certificate: (1) hold a bachelor's degree; (2) submit to a criminal history check; (3) successfully complete pedagogical training or pedagogical course(s) that are in substantive alignment with nationally recognized pedagogical standards, or approved/established by the state board; and (4) pass the same subject matter and competency tests required of traditional program applicants for licensure.



**Senate Bill 89: Exempting certain kindergarten and preschool programs offered by private schools from registration requirements.**

*Effective Date:* July 4, 2021

*Code Reference:* Amends: §49-2-113

*WVDE Contact:* Monica DellaMea, Director, Early and Elementary Learning Services

*Bill Summary:* The passage of this bill no longer requires certain early childhood programs to obtain approval of its operations from the secretary of the West Virginia Department of Health and Human Resources through the child care licensure process. This includes kindergarten, preschool, or school education programs operated by a public school or which is accredited by the West Virginia Department of Education or any other kindergarten, preschool, or school programs which operates with sessions not exceeding four hours per day for any child pre-k and kindergarten programs. Any kindergarten, preschool, or school education program operated by a private, parochial, or church school recognized by the West Virginia Department of Education under Policy 2330 are also not required to obtain approval of its operations.

**Senate Bill 277: Creating COVID-19 Jobs Protection Act**

*Effective Date:* March 11, 2021

*Code Reference:* Adds: §55-19-1; §55-19-2; §55-19-3; §55-19-4; §55-19-5; §55-19-6; §55-19-7; §55-19-8; §55-19-9

*WVDE Contact:* Legal Services

*Bill Summary:* The bill provides immunity to county boards of education, among other, to claims arising from the COVID-19 pandemic, provided the county board (or any of its employees or agents) did not intentionally engage in conduct with actual malice to cause injury.

**Senate Bill 356: Allowing for written part of drivers' exam given in high school drivers' education course.**

*Effective Date:* June 24, 2021

*Code Reference:* Amends: §17B-2-7

*WVDE Contact:* Joey Wiseman, Director, Middle and Secondary Learning Services

*Bill Summary:* The bill allows for West Virginia Driver Education Instructors to administer a knowledge test developed by the Division of Motor Vehicles. Any person who successfully completes a test administered by a driver education instructor is exempt from the proof of school enrollment requirements.

**Senate Bill 375: Relating to county boards of education policies for open enrollment.**

*Effective Date:* July 6, 2021

*Code Reference:* Amends: §18-5-16

*WVDE Contact:* Legal Services

*Bill Summary:* The bill makes a few changes to the modifications that were made in the 2019 education omnibus bill relating to intercounty transfers (where a student seeks to attend school in a county other than the one where he or she resides) and reinserts funding language that was inadvertently omitted in the 2019 bill. Substantively, the bill says that an intercounty transfer application may only be denied by a county board of education if there is no classroom space available. If an intercounty transfer request is denied, the denial must be in writing and sent to both the parents of the student and the West Virginia Department of Education (WVDE), with explanation of denial and notification of appeal rights, within three business days.

**Senate Bill 431: Relating to school attendance notification requirements to DMV.**

*Effective Date:* June 24, 2021

*Code Reference:* Amends: §18-8-11

*WVDE Contact:* Charlene Coburn, Officer, Support and Accountability Services

*Bill Summary:* The bill authorizes DMV to accept electronic verification of a student's attendance and satisfactory academic progress from a county board of education. Verification of these two items is statutorily required prior to issuance of a driver's license or learner's permit.

**Senate Bill 435: Requiring county superintendents to authorize certain school principals or administrators at nonpublic schools to issue work permits for enrolled students.**

*Effective Date:* June 24, 2021

*Code Reference:* Amends: §21-6-3; §21-6-4; §21-6-5; §21-6-10

*WVDE Contact:* Legal Services

*Bill Summary:* The bill permits individuals that are authorized to issue graduation credentials (nonpublic school administrators and homeschool parents) to issue a work permit to children 14 or 15 years of age provided the current statutory requirements for issuing a work permit are satisfied (i.e., written statement from prospective employer that they intend to employ the child; brief description of job child will perform; review of birth certificate verifying child's age; for children attending a nonpublic schools, a certificate showing school attendance). The bill imposes the same responsibilities and penalties for improper issuance of a work permit on nonpublic school administrators and home school parents that are currently imposed upon county superintendents issuing work permits.

**Senate Bill 636: Requiring certain history and civics courses be taught in schools.**

*Effective Date:* July 9, 2021

*Code Reference:* Amends: §18-2-9

*WVDE Contact:* Sonya White, Officer, Office of Teaching and Learning  
Joey Wiseman, Director, Middle and Secondary Learning Services, Office of Teaching and Learning

*Bill Summary:* The bill adds the following topics/areas that must be taught in all public, private, parochial, and denominational schools in West Virginia:

- Institutions and structure of American government, such as the separation of powers, the Electoral College, and federalism.
- American political philosophy and history utilizing writings from prominent figures in Western civilization, such as Aristotle, Thomas Hobbes, John Locke, and Thomas Jefferson.
- Objective and critical analysis of ideologies throughout history, including capitalism, republicanism, democracy, socialism, communism, and fascism.

In providing this instruction, the bill directs that teachers use primary sources and interactive learning techniques, such as mock scenarios, debates, and open and impartial discussions.

The WVBE is directed to develop academic standards for middle and high school students that cover the required instruction and publish a list of approved instructional resources pursuant to 18-2A-1, et seq. The WVBE is required to consult with “other entities” prior to adopting standards; the bill lists the following entities as possible entities to consult: Florida Joint Center for Citizenship, College Board, Bill of Rights Institute, Hillsdale College, Gilder Lehrman Institute of American History, Constitutional Sources Projects, educators, school administrators, postsecondary education representatives, elected officials, business and industry leaders, parents, and the public.

The WVBE is also required to provide a testing/assessment for the history and civics courses required. Such assessments must measure a students’ factual and conceptual knowledge including how facts interrelate and the reasons behind historical documents and events. All students in public, private, parochial, and denominational schools are required to take these assessments.

### **Senate Bill 651: Allowing county boards of education to publish financial statements on website.**

*Effective Date:* July 6, 2021

*Code Reference:* Amends: §18-9-3a

*WVDE Contact:* Amy Willard, School Operations Officer, Office of School Operations and Finance

*Bill Summary:* Starting with financial statements to be published in the fall of 2024, the bill extends the time for county boards of education (CBOE) to annually publish their financial statement in the newspaper from 90 days to 120 days.

Also starting in 2024, the bill provides an electronic option in place of posting the financial statement in the newspaper if certain conditions were met. After conducting a properly noticed public hearing at which interested persons could express their views electronic publication, a CBOE could post its financial statement on the CBOE’s website. The first year the CBOE utilizes the electronic option it is required to publish in the newspaper for two consecutive weeks the availability of the financial statement on the CBOE’s website.



In addition to all financial information currently required to be included in the CBOE's financial statement, if the CBOE utilizes the electronic option to post financial statement it must also include the following information: (1) all persons having a contract with the county board (all professional and service personnel, including substitutes) and the amount paid to each; (2) budget estimates; and (3) list of names of each entity receiving less than \$250 from any fund showing the amount paid and purpose for which it was paid. Financial statements posted on the CBOE website must remain posted until the posting of the following year's financial statement.

### **Senate Bill 680: Allowing State Superintendent of Schools define classroom teachers certified in special education.**

*Effective Date:* July 5, 2021

*Code Reference:* Amends: §18A-4-2

*WVDE Contact:* Amy Willard, School Operations Officer, Office of School Operations and Finance

*Bill Summary:* This is a 'clean-up' bill to a provision included in HB206 (passed in 2019) that provides a three step pay bump to special education classroom teachers.

### **House Bill 2001: Relating generally to creating the West Virginia Jumpstart Savings Program**

*Effective Date:* June 9, 2021

*Code Reference:* Adds: §11-21-12m; §11-21-25; §11-24-10a; §18-30A-1; §18-30A-2; §18-30A-3; §18-30A-4; §18-30A-5; §18-30A-6; §18-30A-7; §18-30A-8; §18-30A-9; §18-30A-10; §18-30A-11; §18-30A-12; §18-30A-13; §18-30A-14; §18-30A-15; §18-30A-16

*WVDE Contact:* Amy Willard, School Operations Officer, Office of School Operations & Finance  
Phillip Uy, Financial Officer

*Bill Summary:* The bill establishes the West Virginia Jumpstart Savings Program as a result of the Legislature recognizing the importance of cultivating an environment in West Virginia where tradespersons and entrepreneurs can be successful in their careers and remain in their home state. The program is to be operable on or before July 1, 2022.

- The bill indicates that the program shall be administered by the West Virginia Jumpstart Savings Board (Board) and outlines the seven members who serve on the Board. The bill outlines the powers and

- authority of the Board to successfully administer the program.
- The bill also outlines the duties and responsibilities of the Treasurer, who is also the chairman and presiding officer of the Board.
  - The bill further establishes the Jumpstart Savings Trust Fund and Jumpstart Savings Expense Fund for the administration of the program and outlines the process for selecting financial organizations to act as depositories and managers for the programs.
  - The bill defines the eligibility criteria for opening a Jumpstart Savings Account and for when the Treasurer will deposit \$100 into a newly opened account.
  - The bill defines qualifying expenses, which include:
    - » The purchase of tools, equipment, or supplies by the beneficiary to be used exclusively in an occupation or professional for which the beneficiary is required to:
    - » Complete an apprenticeship program through the United States Department of Labor
  - Complete an apprenticeship program required by state or legislative rule
  - Earn a license or certification from an Advanced Career Education (ACE) career center; or
  - Earn an associate degree or certification from a community and technical college.
    - » Fees for required certification or licensure for the beneficiary to practice a trade or occupation in the state as described above.
    - » Costs incurred by the beneficiary that are necessary to establish a business in this state in which the beneficiary will practice an occupation or profession as described above, when the costs are exclusively incurred and paid for the purpose of establishing and operating such business.
  - The bill provides for certain tax benefits for contributors to a Jumpstart Savings Account. For West Virginia personal income tax purposes, a taxpayer's adjusted gross income is reduced by an amount equal to the taxpayer's contribution to a Jumpstart Savings Account, up to \$25,000 in a single taxable year, with a carryforward provision not to exceed five taxable years. A similar modification is allowed in an amount equal to a distribution received from a Jumpstart Savings Accounts that is used to pay for qualified expenses, not to exceed \$25,000 for the taxable year.
  - The bill provides for certain nonrefundable tax credits against West Virginia personal income tax and corporate net income tax for a

matching contribution made by a qualified employer into a Jumpstart Savings Account if the beneficiary of the account is an employee of the taxpaying employer and if the beneficiary is a West Virginia resident. The tax credit allowed may not exceed \$5,000 per employee per taxable year and an employer may not claim a credit against more than one type of tax for a single contribution to a Jumpstart Savings Account.

- The bill requires the Board to promulgate legislative, procedural, or emergency rules that outline specific requirements related to the program.

### **House Bill 2009: Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities.**

*Effective Date:* June 17, 2021

*Code Reference:* **Add:** §7-5-25  
**Amends:** §8-5-12; §12-3-13b; §18A-4-9; §21-5-1; §21-5-3; §45A-2-116

*WVDE Contact:* Legal Services

*Bill Summary:* Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities. House Bill 2009 prohibits the deduction or assignment of union, labor organization or club dues or fees from the earnings of county board of education employees. As for wage assignments for permissible purposes, the bill also removes the requirement that assignments of an employee's future wages must be notarized. It will now be sufficient if the assignment is in writing.

### **House Bill 2012: Relating to Public Charter Schools**

*Effective Date:* June 1, 2021

*Code Reference:* **Amends:** §18-5G-1; §18-5G-2; §18-5G-4; §18-5G-5; §18-5G-6; §18-5G-9; §18-5G-10; §18-5G-11  
**Adds:** §18-5G-13; §18-5G-14; §18-5G-15

*WVDE Contact:* Legal Services

*Bill Summary:* The bill makes the following changes to the existing public charter school law:

- Increases the cap on charter schools from 3 to 10 every three years.

**127CSR1**

**TITLE 127  
LEGISLATIVE RULE**

**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION**

**SERIES 1  
CONSTITUTION**

**§127-1-1. General.**

1.1. Scope. — These rules establish the organization and duties of the West Virginia Secondary School Activities Commission.

1.2. Authority. — W. Va. Constitution, Article XII, §2, and W. Va. Code §§18-2-5, 18-2-25, 18-2-25a, and 18-2-25b.

1.3. Filing Date. — July 11, 2019.

1.4. Effective Date. — September 9, 2019.

1.5. Repeal of Former Rule. — This legislative rule amends W. Va. 127CSR1, West Virginia Secondary School Activities Commission Series 1, Constitution, filed August 10, 2018, and effective October 9, 2018.

**§127-1-2. Name.**

2.1. The name of this organization shall be the West Virginia Secondary School Activities Commission (WVSSAC/Commission), a voluntary organization. Extracurricular activities of the students in the public secondary schools are controlled pursuant to W. Va. Code §18-2-25, and authority for the delegation of such control to the Commission is granted by statute.

**§127-1-3. Goals.**

3.1. This Commission, through the employment of the instrumentalities hereinafter established, shall supervise and control interscholastic athletics and band activities among member schools.

3.2. In the performance of these functions it shall be the aim of the Commission:

3.2.a. To stress the cultural values, appreciations, and skills involved in these interscholastic activities, and to promote cooperation and friendship;

3.2.b. To limit these interscholastic activities in both character and quantity so that these activities and events may be looked upon as promoting the objectives of secondary education, and as such shall not interfere with nor abridge the regular program of teachers and students in the performance of their duties;

3.2.c. To encourage economy in expenses of these interscholastic activities;

3.2.d. To discourage long trips for interscholastic activities; and

3.2.e. To establish minimum standards of conduct for both active and spectator participants, coaches, and all other school personnel at all interscholastic activities approved, sponsored, or controlled by this Commission.



**127CSR1****§127-1-4. Membership.**

4.1. The WVSSAC shall be composed of the principals or designee, of those public or private secondary schools which have certified in writing to the State Superintendent of Schools of West Virginia (State Superintendent) that they have elected to delegate the control, supervision, and regulation of their interscholastic athletic and band activities.

4.2. Membership in the Commission shall be predicated upon accepting the following conditions:

4.2.a. The principal or designee is and shall be the sole representative of the school in all matters pertaining to the constitution, bylaws, rules and regulations of the Commission;

4.2.b. The principal or designee is and shall be responsible for conducting interscholastic athletic and band activities of the school in accordance with the constitution, bylaws, rules and regulations of the Commission which have been adopted by the Board of Control of the Commission for the governing of such activities;

4.2.c. Pay the annual dues charged by the Commission;

4.2.d. The principal or designee shall file a statement with the Executive Director of the Commission agreeing to abide by and support the constitution and the rules and regulations of the Commission.

4.2.e. A member school must sponsor one sport per gender during each season - fall, winter, and spring. Schools having membership prior to the 2007-2008 school year are exempt from this provision.

4.2.f. At the annual meeting of the Board of Control, the Executive Director shall announce the names of the principals whose schools have become new members.

4.2.f.1. A middle school shall be a school so designated and approved by the West Virginia Department of Education.

4.2.f.2. A senior high school consists of grades 9, 10, 11, and 12, established by law, and so designated and approved by the West Virginia Department of Education (WVDE).

4.2.g. The first year of membership will be a probationary year with the school not being allowed participation in WVSSAC sponsored tournaments.

4.2.h. A one-time membership fee of \$1,500.00 will be afforded senior high schools, \$500.00 to middle schools, or \$2,000.00 to combined middle/senior high schools.

4.2.i. Public schools seeking membership that are created as a result of consolidation or splitting of existing member schools shall be exempt from the provisions in subsection 4.2.g.

4.3. A school, through its principal, coach, or other official, is not permitted to enter into an agreement with any other school to waive the standards of eligibility of students or waive or change any other requirement established in these regulations.

4.4. Any member violating the regulations of this Commission and refusing to abide by the decision of the Board of Directors or the Review Board shall be subject to the penalties hereinafter set forth. (See §127-6-2 of these regulations.)

**127CSR1**

4.5 In accordance with WV Code § 18-2-25(e), a preparatory athletic program whose participants attend a secondary school in West Virginia for academic instructions may become a non-participating member of the commission, upon application, solely for the purpose of competing on the national level: *Provided*, that the preparatory athletic program shall pay the same fees as member schools. Such recognition does not entitle the preparatory athletic program to compete against a member school during the regular season or in any commission state championship events. And the participants in the preparatory athletic program who attend a secondary school in West Virginia for academic instruction are not eligible to participate on any interscholastic athletic team at the secondary school providing academic instruction. Successful applicants will be issued a Certificate of Recognition by the commission which will expire on June 30 of each year.

**§127-1-5. Administration.**

5.1. The administration of the WVSSAC shall be vested in the secondary school principal and who shall constitute a Board of Control. The Board of Control shall determine the regulation of interscholastic athletic and band activities among the schools represented by the members of the Commission and shall have charge of all Commission funds, and in order to expedite the regulations of activities shall delegate and assign to the Board of Directors hereinafter constituted, and the Executive Director, hereinafter constituted, and working through the Board of Directors, authority to interpret and enforce these regulations. The Board of Control shall delegate and assign to the Board of Trustees, hereinafter constituted, the power and authority to hold title to and manage the property owned by the Commission. These regulations of the Commission shall be the articles, rules, explanations, and interpretations which have been voted upon and approved by a majority vote of the members of the Board of Control present and voting at the annual meeting of the Commission. Fifty members shall constitute a quorum for the transaction of all business at the annual meeting and approval is by a majority vote of the members of the Board of Control present and voting at the annual meeting of the Commission.

5.2. At the annual or called meetings of the Board of Control of the WVSSAC each member shall have one vote on each question or proposition under consideration. A member may appoint, by a written statement to the president of the Commission, the assistant principal or other member of the faculty to represent the school at meetings of the Board of Control, but no such appointment shall absolve the member of responsibility as defined in these regulations.

5.3. The Board of Control of the WVSSAC shall, at its annual meetings, elect officers of the Commission and define their duties as provided in §127-1-6 of these regulations. The officers so elected shall be members of the Board of Directors of the WVSSAC with the powers and duties assigned to it by §127-1-8 of the regulations of the Commission. The Board of Directors shall be the executive body of the Commission and shall administer the regulations of the Commission. Further, the Board of Directors shall enforce the provisions of these regulations through the application of penalties provided under §127-6-2 of these regulations. Adjudication of disagreements and disputes among members of the Commission shall be one of the chief duties of the Board of Directors. Such adjudication may, however, be appealed to the Review Board.

5.4. The Board of Control of the WVSSAC shall delegate to the Board of Directors, hereinafter constituted, the authority to define, devise, and/or create five administrative districts in the State of West Virginia:

5.4.a. Effective July 1, 1971, and until such time as it is necessary to change the boundaries of such districts, the five administrative districts shall be as follows:

5.4.a.1. First District: Brooke, Calhoun, Doddridge, Gilmer, Hancock, Harrison, Marion, Marshall, Ohio, Taylor, Tyler, and Wetzel.

5.4.a.2. Second District: Barbour, Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Monongalia, Morgan, Pendleton, Preston, Randolph, Tucker, and Upshur.

WVSSAC000135

**127CSR1**

5.4.a.3. Third District: Boone, Braxton, Clay, Kanawha, Lewis, Nicholas, Putnam, and Roane.

5.4.a.4. Fourth District: Cabell, Jackson, Lincoln, Logan, Mason, Pleasants, Ritchie, Wayne, Wirt, and Wood.

5.4.a.5. Fifth District: Fayette, Greenbrier, Mercer, Mingo, McDowell, Monroe, Pocahontas, Raleigh, Summers, Webster, and Wyoming.

5.4.b. Any change in the boundaries of the administrative districts adopted by the Board of Directors shall be submitted for approval to the Board of Control at the annual meeting. Any change requires two thirds affirmative vote of the members present and voting at the annual Board of Control meeting.

5.4.c. Any adopted and approved changes in the boundaries of the administrative districts shall not be cause for reducing the length of the regular term of office of an incumbent officer member.

**§127-1-6. Officers and Duties.**

6.1. There shall be five elected officer-members of the WVSSAC, each of whom shall be a principal of a secondary school in West Virginia.

6.1.a. The elected officer-members shall constitute the Board of Directors of the WVSSAC.

6.1.b. One officer-member shall be elected to a regular term each year at the annual meeting of the Commission. The runner-up candidate in each election shall be declared the alternate officer member and shall serve any portion of the officer-member's unexpired term which may occur. If the alternate officer member is not thus determined, then a separate election shall be held to do so. Both the officer-member and alternate-officer-member shall be from the same administrative district.

6.1.c. The regular term of an elected officer-member shall be a period of five years and the term shall begin on Monday of Week 40 of the NFHS Calendar, following the member's election.

6.1.d. An elected officer-member shall be eligible to serve two regular five year terms in succession. Upon completion of the two successive terms, a former officer-member shall not be appointed to, nor elected to fill, a vacancy of an unexpired term during the five year period immediately following the expiration of a regular term. Serving more than one half of an unexpired five year term shall constitute one of the two permitted successive terms.

6.1.e. The election shall be by ballot when more than one candidate from the same administrative district is nominated for officer-member. When more than two candidates from the same administrative district are nominated for officer-member, the balloting shall continue until one candidate receives a majority of the votes cast. The candidate with the least number of votes on each ballot shall be dropped from each subsequent ballot.

6.1.f. At the first meeting of the Board of Directors following the close of the annual meeting of the Commission, the Board of Directors shall elect one of its officer members to serve as president and one to serve as vice president.

**127CSR1**

6.2. Two or more members serving as principals of secondary schools located in the same administrative district shall be ineligible to serve as officer-members simultaneously.

6.3. The term of an officer-member shall end immediately upon their agreement to accept a position that would make them ineligible to hold office in this Commission. However, in the event that a director ceases to meet the qualifications for their position but remains in good standing in the last year of their term, such director shall be given the option to remain in their position for the remainder of the assigned term. The vacancy would then be filled at the next annual Board of Control meeting.

6.4. The annual honorarium of each of the officer-members shall be \$500.00.

6.5. The Executive Director shall act as treasurer, and shall pay out monies from the funds belonging to this Commission in payment of bills only upon order of the president.

6.6. The president shall furnish bond in the amount of \$20,000. The Executive Director shall furnish bond in the amount of \$100,000. The premium for both of these bonds shall be paid by the Commission.

6.7. The Board of Directors may submit questions for discussion and ascertain sentiment of the schools by means of questionnaires. No vote to alter these regulations shall be taken except at the annual meeting of the Commission, except that the Board of Directors may, in case of emergency, with the consent of the Board of Directors, enact and adopt all necessary rules and regulations, whether by deletion, amendment, revision, or addition, and which emergency rules and regulations shall be filed with the Secretary of State and thereafter submitted at the next annual meeting of the Commission for formal adoption or rejection.

**§127-1-7. Meetings.**

7.1. The annual meeting of the WVSSAC shall be planned by the Executive Director and the Board of Directors of the Commission.

7.2. Special meetings may be called by order of the president of the Commission. Fifty principals constitute a quorum to transact business.

**§127-1-8. Board of Directors.**

8.1. The Board of Directors shall have authority to administer the regulations of the WVSSAC.

8.2. The State Superintendent or representative designee, a representative from the West Virginia Board of Education (WVBE), a representative selected by the West Virginia School Boards Association, a representative selected by the West Virginia School Administrators Association, and a representative selected by the West Virginia Athletic Directors Association, shall serve as appointive members of the Board of Directors. These members shall be accorded full voting privileges but shall be ineligible to be elected or to serve as an officer of WVSSAC.

8.2.a. The president of the West Virginia Association of Secondary School Principals (WVASSP) shall serve as an ex-officio member of the Board of Directors. However, serving the one year term as an ex-officio member shall not render that member ineligible to be elected to a regular five year term as an officer-member provided they are otherwise eligible.

8.3. The Board of Directors shall have authority to appoint an Executive Director, except as hereinafter provided, and such additional assistance as may be necessary to assure efficient functioning of the work of



**127CSR1**

the WVSSAC. Furthermore, the Board of Directors shall have authority to fix and pay salaries to the Executive Director and to other personnel appointed to assist the Executive Director. The Board of Directors shall also have authority to devise a plan of retirement benefits for the Executive Director and other full-time personnel appointed to assist the Executive Director.

8.3.a. At least one of the personnel appointed to assist the Executive Director shall have the status of Assistant Executive Director. The appointment of the Assistant Executive Director shall be made by the Board of Directors only upon the nomination and recommendation by the Executive Director. In case the Board of Directors fails to appoint the person nominated, the Executive Director shall nominate and recommend another person and submit the name to the Board of Directors at such time as the Board may direct. The length of the contract term of office of the Assistant Executive Director shall be the same as that prescribed for the Executive Director in §127-1-11.1-11.2 of these regulations. No Assistant Executive Director shall be removed during the contract term of office except for just and reasonable cause as prescribed in §127-1-11.3.

8.3.b. All other personnel to assist the Executive Director shall be recommended by the Executive Director before being considered for employment by the Board of Directors.

8.3.c. The Board of Directors will annually evaluate the performance of the Executive Director. It shall be the responsibility of the Executive Director to evaluate Assistant Executive Directors. The Executive Director must submit a list of areas of concern to be addressed. From that list, a plan of improvement would be implemented by the Executive Director. Failure on the part of the Assistant Executive Director and other personnel to comply with the plan of improvement could result in disciplinary action up to and including dismissal.

8.4. The Board of Directors shall have power of appointment to fill vacancies in its membership until the vacancies are filled regularly at the next annual meeting of the Commission.

8.5. The Board of Directors shall have power to decide all cases of eligibility of students and participants in interscholastic athletic and band activities. The Board may also exercise discretionary powers it may deem necessary for the furtherance of education and interscholastic athletic and band activities in the secondary schools of West Virginia.

8.6. The Board of Directors shall appoint Deputy Board Members who will serve at the will and pleasure of the Board of Directors.

8.7. At the request of the Board of Directors, a Deputy Board Member may investigate matters of eligibility and other violations of the rules and regulations of the WVSSAC. The Deputy Board Member shall submit to the Board of Directors a written report of findings and recommendations for disposition of the case(s).

8.8. The Board of Directors shall have the power to investigate through the Deputy Board Member, or in such other manner as may be found advisable, matters of eligibility and other violations of rules when the Board deems it advisable to do so on the basis of information furnished, even though a formal protest is not filed.

8.9. The Board of Directors shall divide the state into regions and sections for the purpose of administration and for tournaments or meets of any interscholastic athletic or band activity.

**127CSR1**

8.10. The Board of Directors shall hold hearings and render decisions in all contested cases.

8.11. Five (5) officer-members present and eligible to vote at any meeting of the Board of Directors shall constitute a quorum to transact all business.

8.12. The minutes of regular and special meetings of the Board of Directors shall be submitted to principals of all member schools.

**§127-1-9. Funds.**

9.1. The annual dues for members of this Commission shall be based upon the student enrollment of the school they represent.

9.1.a. A \$30.00 flat membership fee for all three- and four-year schools on the first 100 students, or fraction thereof, enrolled in a school.

9.1.b. After the first 100 students enrolled, the membership will be \$10.00 per 100 additional students, or fraction thereof, up to 1,000 students.

9.1.c. For each 100 students above 1,000 an additional \$5.00 per 100 students, or fraction thereof, is to be added.

9.1.d. A combined middle/high school shall pay a flat fee of \$30.00 for grades 7 and 8, and \$10.00 per 100, or fraction thereof, for grades 9, 10, 11, and 12 up to 1,000 students and \$5.00 per 100, or fraction thereof, above 1,000 students.

9.1.e. A \$30.00 fee is the ceiling for all middle schools/schools without grades 9-12.

9.1.f. Dues for the year are payable on or before February 1 of each year. Membership in the Commission shall extend from July 1 to June 30 in any year and shall be lapsed if dues are not paid on or before February 15. The enrollment figure to be used to determine the amount of dues shall be the gross enrollment of all students at the close of the second month of the current school year. In case a membership has lapsed, the member school may not be reinstated until the dues for the year of such lapsed membership, plus a penalty of \$25.00 reinstatement fee, have been paid to the Commission.

9.2. The Board of Directors may reduce the amount of annual dues of the members for any year.

9.3. The Board of Directors is authorized to levy entry fees and assessments for the conducting of any interscholastic athletic or band activity when the activity is not self-supporting. Fees and assessments from one activity division shall not be used for the support of another.

9.4. The Commission shall determine the expenditures of money, but superseding power is given to the Board of Directors to use funds as are necessary to carry on its work.

9.5. The fiscal year of this Commission extends from July 1 to June 30. All monies paid as dues to the Commission, as well as all monies derived from any contest or other event sponsored by the Commission become quasi-public funds and as such shall be subject to an annual audit by the West Virginia Tax Commissioner. A written summary of the audit shall be a part of the annual report of the Executive Director to the Board of Control.

**127CSR1**

9.6. In case of dissolution of the WVSSAC, all funds of the Commission shall be prorated equally and distributed to the County Boards of Education or governing bodies of the members of the Commission. Provided, however, that governing boards of those schools that become members of the Commission subsequent to January 1, 1968, shall be entitled to a prorated share of only that portion of the Commission's fund which has been collected, earned, and accumulated between the inception of such membership and the actual dissolution of the Commission.

**§127-1-10. Amendments.**

10.1. The articles, bylaws, rules and regulations of the WVSSAC may be amended as provided in this section.

10.2. A Constitution and Bylaws Committee, consisting of five members of the Commission, shall be appointed by and shall serve at the will and pleasure of the Board of Directors. The Board of Directors shall designate one of the members so appointed to serve as the chairman of such committee.

10.3. The Board of Directors shall give due consideration to maintaining a balance of representation by programmatic level as defined in §127-1-4.2 of this regulation when making new appointments to the Constitution and Bylaws Committee. However, an incumbent member of the committee shall not be ruled ineligible to continue to serve on the committee solely because they become principal of a secondary school different from that from which they were originally appointed.

10.4. It shall be the function and purpose of the Constitution and Bylaws Committee to provide continuity and cohesion in the rules and regulations governing the interscholastic athletic and band activity programs in West Virginia. Further, it shall be the function and purpose of the Constitution and Bylaws Committee to address what it considers, as needed, interim constitutional rule changes for possible Board of Directors' consideration.

10.5. Expenses for authorized meetings of the Constitution and Bylaws Committee shall be defrayed from the funds of the WVSSAC.

10.6. Proposed changes to these regulations may be submitted by any member of the WVSSAC. Such proposed changes, whether by revision, addition or deletion, shall be postmarked or received by the WVSSAC office by January 15 of each year in order to permit the Constitution and Bylaws Committee to study such proposed changes and to submit them, by mail, to the membership 30 days prior to the annual meeting of the Commission.

10.7. At the annual meeting of the WVSSAC each proposed change received by the Constitution and Bylaws Committee, and those interim emergency rules and regulations enacted by the Committee, shall be presented to the membership of the Commission for discussion and formal adoption or rejection. The Committee may accompany each presentment with an explanation of the effect of the proposed change upon present rules and objectives of the Commission. The Committee may also recommend adoption or rejection of the proposal along with the Committee numerical vote for the recommendation.

10.8. The president of the Commission shall appoint a parliamentarian to serve at the meetings of the Commission to decide questions of procedure during the meetings. Roberts Rules of Order shall be followed in conducting the annual meeting and all other meetings.

**127CSR1**

10.9. An amendment to the regulations of the WVSSAC shall become effective following the annual meeting at which such amendment was adopted and such adoption is formally approved by the WVBE in accordance with W. Va. Code and such other rules and regulations promulgated by the WVBE.

10.10. Nothing in these regulations shall be construed as limiting or in any way affecting the validity of emergency rules and regulations which have been duly approved by the Board of Directors in accordance with §127-1-6.7 of this regulation. Emergency rules and regulations will be effective upon the date they are filed with the Secretary of State of State of West Virginia and remain in effect until the next meeting of the Commission.

**§127-1-11. Executive Director.**

11.1. The Board of Directors shall employ the Executive Director and Assistant Executive Director. At the discretion of the Board of Directors these positions will be given from one year to four year contracts. These contracts may be renegotiated prior to expiration. If a new contract is not to be negotiated, individuals in these positions will be notified in writing six months prior to the end of the contract period. A letter to this effect shall be sent to the President of the WVASSP.

11.2. If a vacancy occurs in the office of the Executive Director or Assistant Executive Director position during any contract period, the Board of Directors shall fill such vacancy. The exception will be that if a person serving as a Board of Directors member or one who has served in that capacity within the preceding one year prior to the vacancy becomes a candidate for one of the positions, the authority to fill the vacancy of the position shall be vested in the Constitution and Bylaws Committee.

11.3. The Executive Director shall not be removed during the term of office contract period except for just and reasonable cause. Reasonable cause may include, but not be limited to the following: immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

**§127-1-12. Duties of the Executive Director.**

12.1. The Executive Director shall carry on the work incident to the efficient functioning of the Commission. The general management and administration of the program of officiating for the interscholastic athletic activities sponsored by this Commission is considered a proper function of the Commission.

12.1.a. The Executive Director shall be responsible for assigning general areas of responsibilities and directing the activities of the Assistant Executive Directors as such responsibilities relate to the work of the Commission. (Revised 2019-20)

12.1.b. Based on employee evaluations and/or employee performance, the Executive Director shall make the appropriate recommendation of the employment status of all other employees.

12.2. The Executive Director shall receive complaints and make investigations concerning the eligibility of member school students who participate in athletic and band activities. The Executive Director shall also receive complaints and make investigations concerning violations of the rules of the Commission.

12.3. The Executive Director shall render decisions and impose penalties in athletic eligibility and other disputes subject to review by the Board of Directors. The Executive Director shall have the discretion to

**127CSR1**

grant exceptions to the rules based upon previous Board of Directors' decisions on cases of a similar nature. Appeals of rendered decisions by the Executive Director shall be filed within 30 days of the decision unless otherwise stated.

12.4. It shall be the duty of the Executive Director to make a full and complete written report to the county board of education or governing body regarding any disciplinary action taken by the Board of Directors against a member school which is located in the county in which the board of education or governing body has jurisdiction.

12.5. The Executive Director shall attend state meetings of the WVASSP and report, when requested by the principals, on the work of the Commission office.

12.6. The Executive Director shall attend the meetings, when practicable, of the National Federation of State High School Associations and bring meeting reports to the attention of the Commission and the Board of Directors.

12.7. The Executive Director shall devote full time to the work assigned by the Board of Directors. The Executive Director shall hold no other remunerative office or position and shall not officiate at any inter-scholastic contest.

12.8. The Executive Director shall represent West Virginia in conferences and controversies involving other states.

12.9. The Executive Director shall exercise all rights and privileges pertaining to eligibility and to representation with the National Federation of State High School Associations granted to members by the Board of Directors and principals by these regulations.

**§127-1-13. Review Board.**

13.1. A WVSSAC Review Board is hereby established.

13.1.a. The Review Board shall consist of seven members to be appointed by the WVBE upon recommendation by the State Superintendent. No person, other than a county superintendent of schools, and a representative of the West Virginia Athletic Directors Association, shall be appointed or shall serve who is employed by the WVBE or any county board of education. All members of the Review Board shall be residents of the State of West Virginia.

13.1.b. Each of the following associations shall be requested to present three nominations to the State Superintendent for membership on the Review Board:

- 13.1.b.1. West Virginia Bar Association;
- 13.1.b.2. West Virginia Association of School Administrators;
- 13.1.b.3. West Virginia State Medical Association;
- 13.1.b.4. West Virginia Sportswriter Association;
- 13.1.b.5. West Virginia Athletic Directors Association; and



**127CSR1**

13.1.b.6. West Virginia Association of Retired School Employees.

13.1.c. Members of the Review Board need not be members of the association which submitted their names in nomination and shall be appointed for a term of five years. Prior to the expiration date of the term of each member of the Review Board, the respective association will nominate three representatives to the State Superintendent who shall subsequently recommend one to the WVBE.

13.1.d. The term of office of each member of the Review Board will begin upon the acceptance of the appointment and will expire on June 30 of the year in which the term expires.

13.1.e. The member with the shortest remaining tenure on the Review Board shall serve as its chairman. Each appointed member of the Review Board shall have equal voting privileges.

13.1.f. In the same manner as prescribed in §127-1-13.1.a through 13.1.c of this regulation, the WVBE shall have power to fill any vacancy which occurs in the membership of the Review Board. Such appointments shall be made at the next regular or called meeting of the WVBE following the existence of a vacancy, and shall be for the unexpired term of the position vacated.

13.1.g. Members of the Review Board shall serve without pay but shall be reimbursed for actual expenses incident to the performances of their duties upon presentation to WVDE an itemized sworn statement thereof. Costs shall be taxed by the Review Board at its discretion, not to exceed the actual expenses incurred, against the party who fails to prevail and the Review Board may, in its discretion, if it so desires, require any appealing party to post security for costs with the State Superintendent in the sum of \$200.

13.1.h. The Review Board will sit for hearings within a reasonable time after the aggrieved party having a matter for review files an appeal, but not longer than 30 days after such appeal is filed, and at such other times as the Review Board may determine, at the State Capitol in Charleston, or in such other place as the Chair of the Review Board may elect.

13.2. The WVDE shall make available adequate and competent secretarial services to record the proceedings and transactions of each meeting of the Review Board and to prepare the official written report, required in these regulations, on each decision rendered by the Review Board.

13.3. Any decision of the Board of Directors involving a penalty, protest, or interpretation of the rules and regulations of this Commission governing interscholastic athletic or band activities may be appealed to the Review Board in the manner hereinafter described. Such appeal may be made by any member of the aggrieved party directly affected by the decision of the Board of Directors and aggrieved by such decision of the Board of Directors.

13.3.a. Appeals must be filed with the State Superintendent within 15 days after any final decision of the Board of Directors of the WVSSAC.

13.3.b. Upon receipt of any appeal, the State Superintendent shall immediately notify each member of the Review Board of the appeal and the Chair of the Review Board shall set a date, time, and place for hearing and shall immediately notify all interested parties, in writing, of the same.

**127CSR1**

13.3.c. The filing of any appeal shall not stay enforcement nor act to supersede the prior ruling or decision of the Board of Directors. However, pending the hearing of any appeal, at its discretion, the Board of Directors may grant a stay of enforcement upon such terms as it deems proper.

13.4. Proceedings for review shall be instituted by filing a petition, and five copies of same, with the State Superintendent within 15 days after the date upon which such party received notice of the final order or decision of the Board of Directors. A copy of the petition shall be served upon the WVSSAC or its Executive Director and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to effect any such appeal.

13.4.a. Within 15 days after receipt of a copy of the petition by the WVSSAC, or its Executive Director, or within such further time as the Review Board may allow, the Commission or the Executive Director shall transmit to the Review Board, the original or a certified copy of the entire record of the proceedings under review, including a transcript of all testimony and all papers, motions, documents, evidence, and records as were before the Commission, all Commission staff memoranda submitted in connection with the case, and a statement of matters officially noted; but, by stipulation of all parties to the review proceedings, the record may be shortened. The expense of preparing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs involved. Upon demand by any party to the appeal, the Commission shall furnish, at the cost of the party requesting same, a copy of such record. In the event the complete record is not filed with the Review Board within the time provided for in this section, the appellant may apply to the Review Board to have the case docketed, and the Review Board shall order such record filed. Failure of the Commission to file the record within the time stipulated shall automatically stay the enforcement of the order or decision of the Board of Directors, in that particular case, and such stay shall continue until such record is filed.

13.4.b. Appeals taken on questions of law, fact, or both, shall be heard upon assignment of error filed in the case or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the Review Board may consider and decide errors which are not assigned or argued.

13.4.c. The review shall be conducted by the Review Board without a jury and shall be upon the records made before the Commission, except that in cases of alleged irregularities in procedure before the Commission not shown in the record, testimony thereon may be taken before the Review Board. The Review Board may hear oral arguments and require written briefs.

13.5. After hearing all evidence and arguments, the Review Board shall render a decision in one of three forms:

13.5.a. Sustaining the ruling of the Board of Directors;

13.5.b. Reversing the ruling of the Board of Directors; or

13.5.c. Remanding the matter to the Board of Directors for further action.

13.5.c.1. The Review Board shall reverse, vacate, or modify the order or decision of the Board of Directors if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decisions, or orders are:

13.5.c.1.A. In violation of constitutional or statutory provisions;

**127CSR1**

13.5.c.1.B. In excess of the statutory authority or jurisdiction of the Commission;

13.5.c.1.C. Made upon unlawful procedures;

13.5.c.1.D. Affected by other error of law;

13.5.c.1.E. Clearly wrong in view of the reliable probative and substantial evidence on the whole record; or

13.5.c.1.F. Arbitrary or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

13.5.c.2. Four members, present and eligible to vote, shall constitute a quorum for the Review Board to transact all business.

13.5.c.3. A majority vote of those members of the Review Board in attendance at any hearing shall be required to render a decision. Such decision shall be final and binding on all parties concerned.

13.5.c.4. Within 30 days from the date of any hearing, the Review Board shall make a written report of its decision, stating briefly therein its reasons for such a decision. Copies of the report shall be mailed to the State Superintendent, the Executive Director of the WVSSAC and, upon written request, to other interested parties.

13.6. Nothing in these regulations shall be construed to limit the Board of Directors in performing its regular duties as provided in the regulations of the WVSSAC; in making investigations and initiating proceedings against any member of the Commission; in making interpretations of the rules of eligibility of student athletes or band members; or in imposing penalties for the violations of any rules, regulations, or bylaws of the Commission.

13.6.a. §127-1-8.5, and §127-6-3.2, *Violation of the Rules*, infer or state that decisions of the Board of Directors are final and are hereby modified only to the extent that such final ruling of the Board of Directors may be appealed within the time limit in the manner prescribed elsewhere in these regulations and affirmed, reversed, or remanded by the Review Board. (Revised 2019-20)

**§127-1-14. Rules and Regulations.**

14.1. The constitution and bylaws of the WVSSAC are the rules and regulations of the Commission.

**§127-1-15. Board of Trustees.**

15.1. The Board of Directors shall appoint a five member Board of Trustees. Each trustee shall be a principal of a member school and shall serve at the will and pleasure of the Board of Directors. Two or more members serving as principals of secondary schools located in the same administrative district shall be ineligible to serve as trustees at the same time.

15.2. The Board of Trustees and their lawfully appointed successors shall hold title to all real estate and other property owned by the WVSSAC except as shall be directed otherwise by the Board of Control.



**127CSR1**

15.3. The Board of Trustees shall elect from the membership thereof, to hold office for a term of one year or until a successor shall be elected, a Chair and, if need requires, a Vice-Chair, Secretary and Treasurer.

15.4. The Board of Trustees shall serve without pay or honorarium.

15.5. If it so elects, the Board of Control shall direct the Board of Trustees to incorporate in accordance with the pertinent laws of West Virginia and in such manner as will fully protect and exempt from any and all legal liability the individual officers and members, jointly and severally, of the WVSSAC for an account of the debts and other obligations of every kind and description of the Commission.

15.6. Should a trustee withdraw from membership of the Commission or be excluded therefrom, that trusteeship therein shall automatically cease from the date of such withdrawal or exclusion.

15.7. Should a trustee refuse, within five days from the receipt thereof, to execute a legal instrument relating to any property of the Commission, when directed to do so by the Board of Control or the Board of Directors, and when all legal requirements have been satisfied with reference to execution, the Board of Directors may declare that membership on the Board of Trustees vacated.

15.8. The Board of Control and/or the Board of Directors may direct the trustees with respect to the purchase, sale, mortgage, encumbrance, construction, repairing, remodeling and maintenance of any and all property, real and personal, as may be committed to the trustees by the Board of Control or Board of Directors.

**127CSR2**

**TITLE 127  
LEGISLATIVE RULE**

**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION**

**SERIES 2  
ATHLETICS, PROVISIONS GOVERNING ELIGIBILITY**

**§127-2-1. General.**

1.1. Scope. — These rules establish the provisions governing student eligibility to participate in interscholastic athletics.

1.2. Authority. — W. Va. Constitution, Article XII, §2, and W. Va. Code §§18-2-5, 18-2-25, 18-2-25a, and 18-2-25b.

1.3. Filing Date. — July 13, 2021.

1.4. Effective Date. — September 13, 2021.

1.5. Repeal of Former Rule. — This legislative rule amends W. Va. 127CSR2, West Virginia Secondary School Activities Commission Series 2, Athletics, Provisions Governing Eligibility, filed July 13, 2021, and effective September 13, 2021.

**§127-2-2. Waivers.**

2.1. The West Virginia Secondary School Activities Commission (WVSSAC/Commission) Board of Directors (Board of Directors) is authorized to grant a waiver to a rule when it determines the rule fails to accomplish the purpose for which it is intended or when the rule causes extreme and undue hardship upon the student.

2.2. Speculative loss of college scholarship is not considered a basis for granting a waiver to these rules.

**§127-2-3. Enrollment and Team Membership.**

3.1. To be eligible for participation in interscholastic athletics, a student must be enrolled fulltime in a member school as described in §127-2-6 on or before the 11<sup>th</sup> instructional day of the academic year. Enrollment must be continuous after the student has officially enrolled in the school.

3.2. Students can participate in interscholastic activities only in schools in which they are enrolled; however, an exception may be granted by the Board of Directors as follows:

3.2.a. if a feeder school does not afford students the opportunity to participate and they are otherwise eligible.

3.2.b. for students from the West Virginia Schools for the Deaf and the Blind (WVSDb) to participate at Hampshire High School or Romney Middle School (only in sports not available at WVSDb).

3.2.c. Member schools containing grades 6 and/or 7 and/or 8 may combine students from two or more schools within the county to form one interscholastic team in a sport. Requests for permission to

**127CSR2**

combine students from two or more schools in the same private/parochial or public school system must be submitted annually to the WVSSAC in writing by the superintendent of the private/parochial or public school system. Schools which are combining to form one team must be feeder schools for the same high school, and at least one school must have sufficient numbers for a team. If more than two schools are involved, principals are to evaluate the number of available participants in each school and shall combine schools to provide as many teams as sufficient numbers allow. Sufficient numbers will be defined as the number of a starting line-up plus 50% (for odd number line-ups, round up).

3.2.d. Students enrolled in the 9<sup>th</sup> grade may participate only on high school teams. Sixth grade students of a K-6 elementary feeder school may participate on their middle school team if granted permission by the county board of education or governing body of a private/parochial school and the school principals involved. Members of a 9<sup>th</sup> grade team at a high school may be grouped for practice with members of the varsity team. However, if a 9<sup>th</sup> grade student participates in a varsity scrimmage or game, that student becomes ineligible for the 9<sup>th</sup> grade team. Participation is defined as dressing and being available to play in a game, regardless if the player enters the game.

3.2.e. Students at a middle feeder school who are not provided the opportunity to participate because of age may move up to their high school if granted permission by the county board of education or governing body of a private/parochial school and the school principals involved.

3.3. A student academically ineligible by rule may begin practicing 15 school days immediately prior to the dates of regaining full eligibility provided all other eligibility requirements are met.

3.4. Students enrolled in the following grades in member schools will be eligible for middle school participation.

3.4.a. Grades 6, 7, and 8 may compete with and against schools/teams of the same configuration.

3.4.b. Stand-alone 9<sup>th</sup> grade programs at a high school may compete with and against schools/teams of the same grade configuration. An 8<sup>th</sup> grade student not provided the opportunity to participate at their member school because the sport is not offered may choose to participate on a standalone 9<sup>th</sup> grade team at their feeder high school, provided the student is otherwise eligible.

3.5. Sixth grade students are eligible to participate in all interscholastic sport teams, including football, in the middle/feeder elementary school in which they are enrolled.

3.6. Students who are enrolled in a grade below the 9<sup>th</sup> are not eligible for a high school team. Students enrolled in a grade below the 6<sup>th</sup> will not be eligible for a middle school team.

3.7. Twelfth grade students will be eligible for spring sports until the close of the school's season.

3.8. Schools may sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill. If a school sponsors a team in a particular sport for members of one sex but sponsors no such team for members of the other sex, and athletic opportunities for members of that sex previously have been limited, members of the excluded sex must be allowed to try out for the team offered. For example, because overall athletic opportunities for females have previously been limited, females will be allowed to try out for baseball, but males will not be allowed to try out for volleyball or softball.

3.9. Students enrolled at West Virginia School for the Deaf will be allowed to participate in sports at the West Virginia School for the Blind. Students from the West Virginia School for the Blind will be allowed to participate in sports at the West Virginia School for the Deaf.

**127CSR2**

3.10. Boarding students at member schools, with the exception of students at the WVSD, are not eligible. (Definition: A boarding student is one who receives room and board that is provided by the school unless such residence is based on Court Order or State Action.)

3.11. Homeschooled students receiving home instruction pursuant to W.Va. Code §18-8-1(c), shall be considered eligible for participating in interscholastic athletic events and other extracurricular activities of public secondary school serving the attendance zone in which the student lives who (1) has been homeschooled for at least one year immediately preceding interscholastic athletic participation; (2) has demonstrated satisfactory evidence of academic progress for the immediately preceding academic year; (3) is enrolled in at least one virtual instructional course per semester, consistent with the applicable virtual instruction policy of the county board in which the home schooled student lives and the applicable virtual instruction policy of the State Board of Education; and (4) is otherwise eligible to participate as a result of being subject to all other eligibility rules applicable to a non-homeschooled students.

**§127-2-4. Age.**

4.1. A student in high school who becomes 19 before August 1 and a student in middle school who becomes 16 before August 1 shall be ineligible for interscholastic competition.

4.2. A student in grade 8 or below who becomes 15 before August 1 shall be ineligible for interscholastic competition at that level.

4.3. A student in grade 8 or below who becomes 15 on or after August 1 shall remain eligible for the entire academic year at that level.

**§127-2-5. Semester and Season.**

5.1. A student may have the privilege to participate in the interscholastic program for four consecutive years (eight consecutive semesters or equivalent) after entering the 9<sup>th</sup> grade.

5.2. While in grades 6, 7, and 8, a student shall not participate in more than three seasons in any single interscholastic activity.

5.3. Ten days of attendance or enrollment shall constitute a semester of eligibility. Ten days includes the day of enrollment, the last day of attendance, and the elapsed time between, provided that they are days when school was actually in session.

5.4. The number of semesters of athletic eligibility of a student is determined by semesters of enrollment and attendance and not by semesters of participation. (This applies for students in grades 9-12 only).

5.5. A student whose eligibility expires with the end of a semester shall not become ineligible until report cards are issued or five school days into the next semester, whichever occurs first. The student will be considered eligible any days between the two semesters.

5.6. Any part of a contest or interscholastic event in which a student competes shall be counted as a season for that sport in grades 6-12 and a semester of participation in grades 9-12.

5.7. The Board of Directors is authorized to grant a waiver to the Semester and Season Rule when it feels the rule fails to accomplish the purpose for which it is intended and when the rule causes extreme and undue hardship upon the student. Waivers may be granted in the following circumstances:

**127CSR2**

5.7.a. The Board of Directors is authorized to consider cases in which a student entering 9<sup>th</sup> grade did not stay in continuous enrollment because of personal illness, or no school was available, or because of other undue hardship reasons ascertained through investigation.

5.7.b. The Board of Directors may provide release from the continuous enrollment restriction provided no participation has occurred during the semester(s) in question.

5.7.c. In no event may a student be allowed to participate for more than four seasons in any one sport in grades 9-12.

5.8. The Board of Directors may also assess appropriate penalties to the student or to the school if the Board of Directors determines through its investigation that the student or the school tried to evade the rule by subterfuge.

**§127-2-6. Scholarship.**

6.1. A student is required to be enrolled in the equivalent of four content area courses toward graduation.

6.1.a. If a student is taking a multiple period course, such as block or vocational courses for a full morning or afternoon, it may be counted as more than one course.

6.1.b. If a student has been declared ineligible according to the standards outlined above, the student may attend summer school and have eligibility reinstated if the student meets the standards at the conclusion of summer school.

6.1.c. If a student has been declared ineligible according to the standards outlined above, the student may have eligibility reinstated at midpoint of the course if the student is meeting the standards at that time.

6.2. A student not attempting four full credit subjects during a semester must complete nine weeks of school work to regain consideration for eligibility. (Revised 2009-10)

6.3. Any student who withdraws from school and does not re-enroll within ten school days of that withdrawal date will lose eligibility for the remainder of that semester.

6.4. Credit deficiencies cannot be made up after the last day of the semester except in a case where a student whose final examinations and course credit are delayed due to illness verified by a physician or as established by local board of education policy.

6.5. The official school transcript will be used to determine a student's eligibility and will be regarded as final.

6.6. In accordance with §126CSR26, West Virginia Board of Education (WVBE) Policy 2436.10, Participation in Extracurricular Activities (C Rule), students must maintain a 2.0 grade point average to participate in interscholastic athletics.

**§127-2-7. Residence-Transfer. (Revised 2008-09; 2019-20)**

**127CSR2**

7.1. Part A - Residence - This residence rule applies to all students enrolled in grades 6-12 in all member schools.

7.1.a. A student shall be eligible in the school located in the attendance zone in which the student's parents reside. Public secondary school attendance zones shall be established by official action by each county board of education. The attendance zones of a private/parochial member school shall be identical with the attendance zone of the public school in which the private/parochial member school is located. In the event of overlapping attendance zones, a student shall be eligible at the school in which the student first chooses to enroll upon entering the 9<sup>th</sup> grade.

7.1.b. When a town or city is located in two counties and only one public secondary school is located in the town or city, students living in the town or city may attend this secondary school if mutually agreed upon by the two county boards of education and approved by the Board of Directors. A student shall be eligible at the school in which the student first chooses to enroll upon entering 9<sup>th</sup> grade.

7.1.c. A student who is in the care of the West Virginia Department of Health and Human Resources (WVDHHR) shall be eligible to participate in interscholastic athletics as a member of the athletic teams of the secondary school in the zone in which the WVDHHR places the student in a home, provided the student is otherwise eligible.

7.1.d. A student entering a school as an "unaccompanied youth" under the conditions of the federal McKinney-Vento Act may be granted eligibility for interscholastic competition by the Board of Directors in accordance with §127-2-1.

7.1.e. A student may be eligible outside the specified zone of attendance if the student has been in attendance in that zone the immediate preceding year (365 days). There can be no change of residence involving change of attendance zone during the immediate preceding year (365 days).

7.1.f. A student whose parents have resided in the school zone for a minimum of one academic year, during which the student has been in attendance for a minimum of one academic year, and whose parents make a bona fide change of residence to a new school zone during the academic year may:

7.1.f.1. Retain eligibility as long as the student retains continuous enrollment and attendance, or;

7.1.f.2. Transfer at time of change of residence to the school in the attendance zone in which the parents are now residing and be eligible in that school, or;

7.1.f.3. Transfer at any time prior to the start of the next academic year to the school in the attendance zone in which the student's parents are residing and be eligible for interscholastic activities at the receiving school.

7.1.f.4. However, a student who has started participation in a sport, which would include practice or contest, that they were participating in at a WVSSAC member school, may not participate in that sport for that sport season at the WVSSAC member school to which they transferred, so long as that transfer was within one contiguous county of their former member school. (Revised 2015-16)

7.1.g. A student whose parents have resided in the school zone for less than one academic year, during which the student has been in attendance for less than one academic year, and whose parents make a bona fide change of residence to a new school zone during the school term may:



**127CSR2**

7.1.g.1. Retain eligibility for the balance of the academic year, provided the student retains continuous enrollment and attendance; or

7.1.g.2. Transfer at time of change of residence to the school in the attendance zone in which the parents are now residing and be eligible in that school; or

7.1.g.3. If a student chooses to remain enrolled at the school outside the attendance zone in which the student's parents reside at the conclusion of the academic year the student will be ineligible for the next academic year.

7.1.h. Foreign exchange students, attending a member school under the auspices of a Council on Standards for International Educational Travel (CSIET) student exchange program, shall be considered eligible regarding residence for a maximum period of one calendar year. A foreign exchange student may not be a graduate of the secondary school of the home country and must maintain eligibility in a member school. A foreign exchange program must assign students to schools by a method which insures that no student, school, or other interested party may influence the assignment for athletic purposes.

7.1.i. A student returning from an approved foreign exchange program may resume interscholastic competition in the member school in which the student was enrolled at the point of interruption, provided the student does not fulfill graduation requirements while participating in the exchange program and provided the student meets all requirements relative to age and semesters of eligibility.

**7.2. Part B - Transfer. (Revised 2008-09)**

7.2.a. If a student transfers during the academic year from one secondary school to another secondary school, the student shall be ineligible for 365 days from date of enrollment, absent a bona fide change of residence. Students who are ineligible under this rule may practice during the period of ineligibility, given they meet all other factors of eligibility outlined in §126-26-3. Determination of a bona fide change of residence depends upon the facts of each case and is defined as, but not limited to: (Revised 2020-21)

7.2.a.1. The original residence must be abandoned as a residence; in that the original residence is sold, rented, or disposed of as a residence, and must not be used as a residence by the immediate family;

7.2.a.2. The change is being made with the intent that the move is permanent;

7.2.a.3. The entire family must make the change;

7.2.a.4. Documentation of connection of utilities to the residence (e.g. power, water, waste, sewer);

7.2.a.5. Change of voter's registration, driver's license, mailing address, etc.;

7.2.a.6. If a student returns to a previously abandoned residence, the student shall be ineligible for 365 days from the date of enrollment. (Revised 20018-19)

7.2.b. If the transfer is from a private/parochial school to a member school in the zone where the student's parents reside, a student is eligible providing: (1) the student is enrolling in a member school for the first time, and (2) the principals of both private/parochial and member schools involved concur that undue influence is not involved with the transfer.

**127CSR2**

7.2.c. A student may be transferred from one attendance zone to another zone within the same county by a county board of education and maintain eligibility. The transfer must be initiated by county board of education personnel to fulfill certain special education program(s) not available in the attendance zone from which the student is transferred. Upon the completion of the special program, the student must return to the attendance zone of the student's residence.

7.2.d. For the purpose of athletic eligibility, the Commission does not recognize emancipated minor status as it relates to transfer, except as might occur in marriage and relocation to another school zone.

7.2.e. Notwithstanding any other provisions of WVSSAC rules and regulations, if a student transfers for athletic reasons, the student will be ineligible for 365 days from the date of enrollment. A transfer for athletic reasons depends upon the facts of each case and is defined as, but not limited to:

7.2.e.1. Seeking a superior athletic team;

7.2.e.2. Seeking a team consistent with the student's ability;

7.2.e.3. Seeking relief from conflict with the philosophy or action of an administrator, teacher, or coach relating to athletics;

7.2.e.4. Seeking a means to nullify punitive action by the previous school.

7.2.f. If a student enrolls who has been released and accepted by formal actions of county boards of education or similar governing bodies of a private/parochial school which have verified that such transfer is not for athletic purposes, the student will be granted immediate eligibility provided all other rules are met. The enrollment transfer must occur at the beginning of the 9<sup>th</sup> grade academic year with the student enrolled on or before the eleventh instructional day of the beginning of the academic year and provided that the student is residing with the parents. With respect to a student whose parents reside in an attendance zone containing more than one member school, at the time of enrollment in an outofdistrict school at the beginning of the student's 9<sup>th</sup> grade academic year, the student must identify a "home" school. In the event the student later elects to utilize "transfer back" (§127-2-7.2.g), the student is only eligible to transfer back to the identified "home" school. Once a student has been a member of a team that has participated in a scrimmage or contest, the student has established eligibility at that school. (Revised 2012-13; 2017-18)

7.2.g. Transfer Back. During the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, and 12<sup>th</sup> grades, a student shall be entitled to one transfer back from a school located outside the attendance zone where the student's parents reside into the member school located within the attendance zone where the student's parents reside. This school must be the home school identified in the initial enrollment in the out of district school. Any student transferring under the provisions of this rule will not become eligible until the completion of the academic year in which the transfer occurs. Eligibility will begin with the succeeding fall sports season, or immediately if the transfer back is completed on or before the eleventh instructional day of the beginning of the academic year. Once a student has been a member of a team that has participated in a scrimmage or contest, the student has established eligibility at that school.

7.2.h. If a member middle school student is released and accepted by formal actions of county board of education or governing body of a private/parochial school which have verified that such transfer is not for athletic purposes, the student will be granted immediate eligibility provided all other rules are met. The transfer must occur at the beginning of the academic year with the student enrolled on or before the eleventh instructional day of the beginning of the academic year and provided that the student is residing



## 127CSR2

with the parents. Once a student has been a member of a team that has participated in a scrimmage or contest, the student has established eligibility at that school.

7.2.i. The eligibility of a student whose parents are divorced or legally separated is determined by court decree establishing residency with one parent.

7.2.j. After establishing initial residency with one parent, all subsequent transfers will require a period of ineligibility for 365 days from date of enrollment unless a change of residency is decreed by the court.

7.2.k Any homeschooled students participating in interscholastic athletics pursuant to W. Va. Code §18-2-25(d) who leaves a member school during the school year is subject to the same rules protocols that apply to non-homeschool student transfers.

### **§127-2-8. Adoption/Guardianship.**

8.1. A student shall be eligible to participate in interscholastic athletics and activities only if: (1) residing with one or both of the parents; (2) residing with a testamentary guardian following the death of the parents; or (3) residing in a location where the student was placed by the WVDHHR pursuant to §1272-7.1.c.

8.2. The residence of a testamentary guardian shall constitute the residence of the ward when, and only when: (1) the testamentary guardian has been duly appointed by the last will and testament of the student's last surviving parent; (2) the testamentary guardian has duly qualified as such before the proper tribunal in West Virginia; and (3) the student is actually residing in the household of the testamentary guardian at the time of the student's sport participation.

8.3. Notwithstanding any other provision of the WVSSAC rules and regulations, any student residing with a guardian/custodian other than a testamentary guardian may not compete for a school in any sport on the varsity level but may compete at the junior varsity level. If a student elects to participate at the junior varsity level pursuant to this rule, the student may not participate at the varsity level even after being enrolled at the school for 365 days. However, if a student elects to participate at the junior varsity level pursuant to this rule, and then commences to reside with a custodial parent, the student may participate at the varsity level notwithstanding the fact that the student had previously participated at the junior varsity level pursuant to this rule.

8.4. Notwithstanding any other provisions of WVSSAC rules and regulations, legal guardian/custodian may not be changed for athletic reasons. A transfer for athletic reasons is defined in §127-2-7.2.e.1-4.

### **§127-2-9. Undue Influence - Recruiting.**

9.1. The use of influence by a person or group, connected or not connected with the school, to secure or retain a student for athletic participation is not permitted and may cause the student to be ineligible and may cause certain sanctions to be placed against the member school.

9.2. An employee of the school system shall not initiate any communication regarding athletic participation or enrollment with a student, parent of a student, guardian, or family member, in person or through a third party, prior to enrollment. This does not include the introduction of athletic programs to students at feeder schools. (Revised 2014-15)

**127CSR2**

9.3. A student, parent of a student, or guardian shall not be offered for the purpose of encouraging enrollment in a school or participation in an athletic program any inducement, such as free tuition, jobs, supplies, uniforms, other than that which is provided for all students.

**§127-2-10. Non-school Participation.**

10.1. During the academic year and while a member of a school team, a student shall neither participate, which includes, but is not limited to, fund-raising activities, team picture, tryouts, etc., on any formally organized non-school team in the same sport, nor shall the student compete as an individual unattached in non-school formally organized competition in the same sport. The following sports are exempted from the provisions of this rule: cross country, golf, swimming, tennis, track, and wrestling, provided that: (Revised 2011-12)

10.1.a. participation is approved by the student's principal; and

10.1.b. the student misses no school-sponsored athletic contest involving a team in that sport.

10.2. A student may participate as a member of a national team (and the actual, direct tryouts thereof) which is defined as:

10.2.a. one selected by the national governing body of the sport;

10.2.b. while representing the National Federation in an International Schoolsport Federation;

10.2.c. as a representative of the United States in recognized national or international events; or

10.2.d. a qualifier for the West Virginia Golf Association's Amateur Championship or the United States Golf Association's United States Amateur Championship.

10.3. A student who has participated on a non-school team or as an individual unattached in nonschool formally organized competition after the beginning practice date of that sport will be ineligible for participation on that school team for that season in that particular sport except as provided by §127-2-10.1 and §127-2-10.2.

**§127-2-11. Amateur.**

11.1. A student who represents a school in an interscholastic sport shall be an amateur in that sport. An amateur athlete is one who engages in athletic competition solely for the physical, mental, social, and pleasure benefits derived therefrom. An athlete forfeits amateur status in a sport by:

11.1.a. competing for money or other monetary compensation (allowable travel, meals, and lodging expenses may be accepted);

11.1.b. receiving any award or prize of monetary value which has not been approved by the WVSSAC;

11.1.c. capitalizing on athletic fame by receiving money or gifts of monetary value (scholarships to institutions of higher learning are specifically exempted);

**127CSR2**

11.1.d. signing a professional playing contract in that sport.

11.2. Accepting a nominal, standard fee or salary for instructing, supervising, or officiating in organized youth sports program or recreation, playground, or camp activities shall not jeopardize amateur status. "Organized youth sports program" includes both school and non-school programs. Compensation for giving private lessons is permissible if approved by the WVSSAC.

11.3. A student who loses amateur status may apply to the WVSSAC for reinstatement in the interscholastic program after a waiting period of one complete high school season (starting practice date through state tournament or end of season) for that sport.

11.4. A senior student may participate in a professional tryout either during or after the season of that sport provided that:

11.4.a. it does not occur on the day of a school contest of that sport; and

11.4.b. it meets with the principal's approval.

**§127-2-12. Participation as an Ineligible.**

12.1. Any student who participates in an interscholastic athletic contest as an ineligible, either knowingly or inadvertently, shall be ineligible for a period not to exceed 365 days as determined by the WVSSAC Executive Director.

**§127-2-13. Practice.**

13.1. Only students enrolled and eligible to be listed on the eligibility certificate for that sport in the specific member school are allowed to participate in that school's practices. Exceptions are §§12723.2, 1272-3.5, and 127-2-13.6. (Revised 2012-13)

13.2. The frequency and length of practice is at the discretion of each member school.

13.3. Member schools of the WVSSAC may practice on any day of the year with the exception of Sunday practice. §127-3-14.2 further clarifies Sunday practice.

13.4. Individual players of a team must have practiced:

13.4.a. on five separate days before participating in an interscholastic scrimmage. (Effective September 13, 2021)

13.4.b. on 12 separate days, exclusive of the day of a contest, before participating in an interscholastic contest. The following sport(s) is exempted from the provisions of this rule: golf. (Effective September 13, 2021)

13.4.c. a student athlete who is absent from practice with their team for non-medical reasons, and not under a doctor care, for more than 14 consecutive days must have the required full 14 practice days before resuming participation in a contest. Students participating in football must follow the practice progression as set forth in §127-3-23. (Revised 2011-12)

**127CSR2**

13.5. A student shall not be permitted to engage in interscholastic practice until that student has filed with the principal a completed Athletic Participation/Parental Consent/Physician's Certificate Form. §12733 further explains this required form.

13.6. A student academically ineligible may begin practicing 15 school days immediately prior to the date of regaining full eligibility. (All other ineligible students may not practice.)

13.7. If a student has established eligibility in a sport requiring 14 separate days of practice and is continuing to participate in that sport or no school days have lapsed from one sport to another sport in a same season, the student may participate in another sport of the season after completing five separate days of sport specific practice in the second sport. (Revised 2018-19)

13.8. Students participating in a sport(s) in one season must have practiced 14 separate days, exclusive of the day of a contest, to be eligible to participate in a sport in the next season with the following exception: the student has continued to practice or participate in tournament play without an interruption of school days. The student must complete five separate days of sport specific practice in the second sport.

**§127-2-14. Concussion. (Revised 2013-14)**

14.1. Pursuant to W. Va. Code §18-2-25a, member schools are to provide information in the format approved by the Board of Directors to appropriate school administrators, coaches, interscholastic athletes, and their parents or guardians describing the nature and risk of concussion and head injury, including the risks of continuing to play or practice after a concussion or head injury. Annually, all interscholastic athletes and their parents are required to sign and return a statement that they have read the information provided to them prior to the interscholastic athlete beginning practice or competition for that scholastic year. (See, WVSSAC, Sports Medicine tab, Sports Medicine Packet: Athletic Participation/Parental Consent/Physician's Certificate Form (Physical Exam Form), A Parent's Guide to Concussions (Information to parents), available on the WVSSAC website at <http://www.wvssac.org>.)

14.2. Each head coach of member schools is required annually to complete a concussion and head injury recognition and return-to-play protocol course approved by the WVSSAC. (See, WVSSAC, Sports Medicine tab, Sports Medicine Packet: Coach's Course, available on the WVSSAC website at <http://www.wvssac.org>.)

14.3. An interscholastic athlete suspected of a concussion or head injury by a licensed health care professional or by the head coach or athletic trainer shall be removed from play or practice and not return to play or practice until the athlete is evaluated by a licensed health care professional trained in the evaluation and management of concussions and receives written clearance to return to play and practice from the licensed health care professional. (See, WVSSAC, Sports Medicine tab, Sports Medicine Packet: available on the WVSSAC website at <http://www.wvssac.org>.)

14.4. Any of the following who have appropriate training in the evaluation and management of head injuries shall be considered as the licensed health care professional enumerated in this rule:

14.4.a. Medical Doctor (MD);

14.4.b. Doctor of Osteopathy (DO);

14.4.c. Doctor of Chiropractic (DC);

14.4.d. Advanced Registered Nurse Practitioner (ARNP);

**127CSR2**

14.4.e. Physician Assistant (PA-C); or

14.4.f. Registered Certified Athletic Trainer (ATC/R).

14.4g. Physical Therapist (PT)

14.5. Member schools must submit the concussion report form to the WVSSAC within 30 days of an interscholastic athlete suffering or being suspected of suffering a concussion or head injury in a practice or game. (See, WVSSAC, Sports Medicine tab, Sports Medicine Packet, available on the WVSSAC website at <http://www.wvssac.org>.)

14.6. The WVBE shall be notified if any of the documents referred to in this section of the rule are revised, amended, or altered as to form or content. The documents shall include but not be limited to: Athletic Participation/Parental Consent/Physician's Certificate Form (Physical Exam Form); A Parent's Guide to Concussions (Information to Parents), Coach's Course, Return to Play Protocol, Concussion Report form. All forms are found in the WVSSAC Sports Medicine Packet and are available under the Sports Medicine tab, Sports Medicine Packet on the WVSSAC website at <http://www.wvssac.org>.)

**§127-2-15. Emergency Action Plan (EAP). (Revised 2020-21)**

15.1. Effective December 31, 2017, each member school shall adopt and submit to the WVSSAC and to the county board of education an EAP for athletics, designed to respond to athletic injuries that occur on school property during school-sponsored athletic practices and events.

15.2. Each EAP shall include:

15.2.a. Implementation of the EAP for every sport at every level. The EAP shall discuss how it is to be implemented with the participation of the school's principal and athletic director (if any), coaches, and athletes.

15.2.b. Training. The EAP shall include any necessary training for any person designated as responsible for any portion of the implementation of the EAP. Training may be in person or online, as may be available to the school.

15.2.c. Protocol for summoning emergency medical assistance. The EAP shall discuss how the school's sports teams will assign responsibility for summoning emergency medical assistance in the case of an emergency during a practice or event.

15.2.d. Protocol for beginning Cardiopulmonary Resuscitation (CPR). The EAP shall discuss how the school's sports teams will assign responsibility for beginning CPR in the event it is necessary. Each sports team must have individuals trained in CPR. The school shall provide proper training to any individual assigned responsibility for performing CPR.

15.2.e. Requirement for Automated External Defibrillator (AED); Protocol for the use of AED. Each member school will have an AED on the school or event grounds during the duration of all athletic events and practices. The EAP must address how the school's sports teams will assign responsibility for retrieving and using an AED in the event it is necessary. Each sports team must be instructed on the location of the nearest



**127CSR2**

AED to any practice or event facility. The school shall provide proper training to any individual assigned responsibility for using an AED. **(Revised 2020-21)**

15.2.f. Protocol for the treatment of heat stroke. The EAP must address how the school's sports teams will prepare for and treat heat stroke. Each sports team that practices outdoors is recommended to have available an emersion tub, and must have water, ice, and towels, to be used for the treatment of heat stroke. The EAP must address how the school's sports teams will assign responsibility for obtaining these items and preparing them before a practice or game begins.

15.2.g. Written records. The EAP shall require that each of the school's sports teams assign responsibility for the items discussed above at the beginning of each season, and record those assignments on a written record, which record shall be retained by the sports team and the school.

15.2.h. Symptoms and risk factors for sudden cardiac arrest. The EAP shall require that schools train athletes, coaches, and volunteers about the symptoms and risk factors for sudden cardiac arrest.

15.2.i. Coordination with local Emergency Medical Systems. The EAP shall require that schools coordinate with their local Emergency Medical Services (EMS) personnel, notifying EMS personnel of the availability of AEDs at the school, and notifying EMS personnel of the EAP adopted by the school.

15.2.j. Follow up retraining. The EAP shall require that school sports teams that respond to an emergency incident meet to discuss their response after the incident has passed. Discussion shall center on the team's response to the incident, areas for improvement, and retraining that may be necessary, and any counseling that may be required for the individuals involved.

15.3. Schools may, but are not required to adopt the Anyone Can Save a Life Program (available at [www.anyonecansavealife.org](http://www.anyonecansavealife.org)), which meets all of the requirements of this rule, to be implemented as that schools EAP in compliance with this rule.

15.4. Each EAP adopted pursuant to this rule shall be provided to the county board of education, and shall be retained by the county board of education until the EAP is superseded by a revised EAP.

126CSR26

TITLE 126

LEGISLATIVE RULE

BOARD OF EDUCATION

SERIES 26

**PARTICIPATION IN EXTRACURRICULAR ACTIVITIES (2436.10)**

**§126-26-1. General.**

1.1. Scope. — This legislative rule establishes academic eligibility of students to participate in extracurricular activities both during and after normal school hours in West Virginia public schools.

1.2. Authority. — W. Va. Constitution, Article XII, §2; and W. Va. Code §18-2-5 and §18-2-25(d).

1.3. Filing Date. — November 12, 2020.

1.4. Effective Date. — December 14, 2020.

1.5. Repeal of Former Rule. — This legislative rule amends W. Va. 126CSR26, Policy 2436.10, Participation in Extracurricular Activities, filed May 16, 2008, and effective June 16, 2008.

**§126-26-2. Applicability.**

2.1. This policy applies only to interscholastic athletics, student government, and class officers in grades 6-12. Excluded from this policy are co-curricular activities which are closely related to identifiable academic programs/areas of study and which serve to complement academic curricular activities such as vocational, linguistic, mathematic, scientific, forensic, theatrical, musical, journalistic, and other similar academic cocurricular activities.

**§126-26-3. Eligibility.**

3.1. In order to participate in the extracurricular activities to which this policy applies, a student must meet all state and local attendance requirements and:

3.1.a. Maintain a 2.0 average.

3.1.a.1. A 2.0 average is defined as a grade-point average (GPA) of 2.0 or better on a scale where an "A" mark earns 4 points, a "B" is awarded 3 points, a "C" is worth 2 points, a "D" is given a value of 1 point, and an "F" is worth 0 points.

3.1.a.2. For purposes of achieving the clearest and most uniform application of the policy for those schools which use a numerical grading system, all numerical grades shall be converted to the corresponding letter grade. Each letter grade shall be assigned the appropriate value as set forth above, and the average thereof computed to determine whether the student is eligible. No enhanced value should be given for a "plus" or "minus" designation, such as "B+" or "C-"; all grades with the same letter designation have the same numerical value in the 4.0 scale.

3.1.a.3. In computing a student's GPA for purposes of this policy, all subjects undertaken by the student and for which a final grade is recorded are to be considered. Athletic practice may not be counted as a subject. The total number of classes taken is divided into the total number of grade points earned to determine the GPA. Classes for which a pass/fail is awarded will be included in computing the GPA only if the student failed the class.

3.1.a.4. A student's eligibility will be determined for each semester by the student's GPA the previous semester (or, in schools which do not use the traditional semester approach, during the previous 18 week period).

3.1.a.5. If a student does not maintain a 2.0 average for the semester, the student will be ineligible for participation for the following semester. Students not meeting eligibility requirements shall be reviewed at the mid-point of the second semester (the nine week point) to determine whether the student has achieved a 2.0 average.

3.1.a.6. If a student does not earn a 2.0 average by the end of the second semester, the student may attend summer school to raise the GPA so that the student is eligible for participation at the beginning of the next school year. For purposes of computing the GPA after summer school, all of the student's grades from the second semester plus the student's grade from the summer school will be used to determine the GPA.

3.1.a.7. A student who has not achieved a 2.0 GPA for the previous semester may have eligibility reinstated at midsemester if the student has attained at least a 2.0 GPA. In schools and/or counties where the traditional semester approach is not used, the nine week point shall be utilized in place of the midsemester.

3.1.a.8. In the case of students with exceptionalities as set forth in W. Va. 126CSR16, Policy 2419, Regulations for the Education of Students with Exceptionalities, if grades are given, all grades received from placements in regular classrooms and special education classrooms should be included when computing the GPA. Exceptional students placed in ungraded programs will be eligible for participation in extracurricular activities if their records indicate that they are making satisfactory progress in meeting the objectives of their individualized education program (IEP).

3.1.a.9. Students who have had a break in public school attendance for any reason may be required to establish eligibility after re-enrollment in the public school. If the county accepts the transfer of credits/grades earned in the non-public setting, then those credits/grades shall be used in determining academic eligibility. If the county does not accept the transfer of credits/grades earned in the non-public setting, then eligibility must be established after re-enrollment in the public school setting. Eligibility shall be gained at midsemester (nine week point) if the student has attained at least a 2.0 GPA. In schools and/or counties where the traditional semester approach is not used, the nine week point shall be utilized in place of the midsemester.

3.1.a.10. Students who are entering public schools or other West Virginia Secondary Schools Activities Commission (WVSSAC) member schools for the first time will be eligible for participation as follows:

3.1.a.10.A. Students who have not earned grades that the receiving school will accept for credit upon transfer will be eligible upon enrollment and must have a 2.0 GPA at the end of the semester in which they enroll to remain eligible.



3.1.a.10.B. Students who have earned grades that the receiving school will accept for credit upon transfer must have earned a 2.0 GPA in the previous semester to be eligible upon enrollment. If not eligible upon enrollment, the student shall become eligible at the midsemester (nine week point) if the student has attained at least a 2.0 GPA.

3.1.a.11. Homeschooled students participating in interscholastic athletics pursuant to W. Va. Code §18-2-25(d) will be eligible for participation, provided that the student:

3.1.a.11.A. complies with the rules promulgated by the WVSSAC;

3.1.a.11.B. has demonstrated satisfactory evidence of academic progress for the immediately preceding year and that the student's average test results for the immediately preceding year are within or above the fourth stanine in all subject areas; and

3.1.a.11.C. is enrolled in at least one virtual instructional course per semester, consistent with the applicable virtual instruction policies of the county in which the homeschooled student lives and the applicable virtual instruction policies of the WVBE. A homeschooled student who fails to receive a "C" grade or higher at the conclusion of the virtual instruction course or semester, whichever is earliest, shall be ineligible to continue participation and remain ineligible for the following semester.

**§126-26-4. Severability.**

4.1. If any provision of this policy or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy.

## Questions and Answers

## 1. How do you compute GPA with block scheduling?

Answer: After careful review of eligibility determination and block scheduling, it appears that perhaps this issue has been made too complicated. If one keeps in mind that eligibility is based upon half credits of the previous semester (18 weeks), eligibility may easily be determined by using the Student Permanent Record Card and the amount of credit attempted.

The following three recordings should clarify GPA computation for eligibility:

- (1) Semester Recording: All full credit courses with final course grade recorded.
- | Course     | Grade | Attempted Credit | Quality Points |
|------------|-------|------------------|----------------|
| English 10 | A     | 1                | 4              |
| History    | B     | 1                | 3              |
| Band       | C     | 1                | 2              |
| Algebra    | D     | 1                | 1              |
- GPA:  $(4+3+2+1) \div 4 = 2.5$  eligible
- (2) Semester Recording: All full credit courses with nine week grades recorded.
- | Course     | Grade | Attempted Credit | Quality Points |
|------------|-------|------------------|----------------|
| English 10 | A/B   | 1                |                |
| History    | C/B   | 1                |                |
| Band       | C/C   | 1                |                |
| Algebra    | D/F   | 1                |                |
- GPA:  $(4+3+2+3+2+2+1+0) \div 8 = 2.125$  eligible
- (3) Semester Recording: Combination of full and half credit courses recorded.
- | Course    | Grade | Attempted Credit | Quality Points |
|-----------|-------|------------------|----------------|
| English   | A     | 1                |                |
| History   | B     | 1                |                |
| Band      | C     | 1                |                |
| Civil War | C     | .5               |                |
| Tumbling  | B     | .5               |                |
- GPA:  $(4+4+3+3+2+2+2+3) \div 8 = 2.875$  or  $(4+3+2+1+1.5) \div 4 = 2.875$  eligible

\*In all cases, the computation of summer school grades will be based upon the method of recording on the Student Permanent Record Card and the amount of credit attempted.

## 2. How do you compute the 2.0 average?

Answer: (1) The basis for computing the grade-point average (GPA) will be the number of regularly scheduled periods, exclusive of study hall, non-graded classes, audited classes, or pass/fail classes for which a passing grade is given.

(2) One grade will be given for each period. If two (2) or more classes are taken during a period within a semester, the letter grade for each class will be converted to its appropriate grade point and averaged by the number of classes to determine a grade point for that period.

Examples:

- (1) 2 classes
- 9 weeks class - grade B - 3  
 9 weeks class - grade C - 2  
 $5 \div 2 = 2.5$  average
- (2) 3 classes
- 6 weeks class - grade B - 3  
 6 weeks class - grade D - 1  
 6 weeks class - grade D - 1  
 $5 \div 3 = 1.66$  average

The letter grade for each of the other periods will be converted to a grade point. Then all the grade points will be totaled and divided by the number of periods.

## Examples:

(1)	2 classes in one period	2.5 average
	Math ----- C=	2.0
	Social Studies ----- C=	2.0
	English ----- F=	0.0
	Science ----- C=	2.0
	Music ----- B=	3.0
		11.5 $\div$ 6 = 1.916 ineligible
(2)	3 classes in one period	1.7 average
	Math ----- B=	3.0
	Social Studies ----- C=	2.0
	English ----- B=	3.0
	Science ----- D=	1.0
		10.7 $\div$ 5 = 2.14 eligible

## 3. How do you compute summer school?

Answer: The basis for determining the number of periods will be the number of half credits awarded. Each half credit will count as one period and will be added to all grades earned during the second semester. The average will then be recomputed.

## Example:

## a. Classes from the previous semester:

2 classes in one period	2.5 average
Math ----- C=	2.0
Social Studies ----- C=	2.0
English ----- F=	0.0
Science ----- C=	2.0
Music ----- B=	3.0
	11.5 $\div$ 6 = 1.916 ineligible

## b. Classes for summer school:

English - 1/2 credit - ----- B=	3
Algebra - 1/2 credit - ----- B=	3
	6

## Final Average:

2 classes in one period	2.5 average
Math ----- C=	2.0
Social Studies ----- C=	2.0
English ----- F=	0.0
Science ----- C=	2.0
Music ----- B=	3.0
English ----- B=	3.0
Algebra ----- B=	3.0
	17.5 $\div$ 8 = 2.1875 eligible

## 4. How are grades averaged if a student is in a class three days in a week and study hall the other two?

Answer: The grade earned for the class will be pro-rated to arrive at a period grade. In other words, if a class meets three days a week for a semester, that class would count as three-fifths or .6 in the calculation. For example:

Physical Education (3 days per week) — A = 4 points  $\times$  .6  $\{3/5\}$  = 2.4

Physical Education-(.6) ----- A =	2.4
Math ----- C =	2.0
Social Studies ----- C =	2.0
English ----- F =	0.0
Science ----- C =	2.0
Music ----- B =	3.0

$$11.4 \div 5.6 = 2.0358 \text{ eligible}$$

5. If a student attends vo-tech school for three class periods but only receives one grade for these 3 periods, how do you compute the average?

Answer: The grade will be counted three times and considered as three periods.

6. How do you compute the grade when a student is taking three subjects during a class period during a semester?

Answer: The grades for each subject will be averaged to get a class grade. For example:

1st 6 weeks -	grade B =	3.0
2nd 6 weeks -	grade C =	2.0
3rd 6 weeks -	grade C =	2.0
		$7.0 \div 3 = 2.333$ - grade point average for that class period

7. How will schools on modular schedules without traditional class periods be computed?

Answer: Each grade per one-half unit will be counted as one period. Classes for which less than one-half unit is awarded may be grouped together to form one-half unit (at least 4,050 minutes) and the grades earned in those classes then computed as in question 6. In grades 7 and 8, where units are not awarded, classes may be grouped by using the length the regularly scheduled period rather than the one-half unit as the basis for computation.

8. May a student practice during the period of ineligibility?

Answer: No, if the student does not have a 2.0 average, he or she may not practice, with one exception. The exception is that a student may begin practicing 15 practice days before the end of his/her period of ineligibility (at nine weeks and at end of semester), if it can be confirmed that the student has a 2.0 average at that time.

9. In cases where students are attempting to regain their eligibility at midsemester, what is meant by most recent grading period?

Answer: In systems utilizing a nine week marking period, the students must have a 2.0 GPA for that grading period. In systems utilizing a six week marking period, the student must have a 2.0 GPA at that grading period and continue to maintain a 2.0 GPA until midsemester (nine weeks).

- If the most recent grading period is six weeks and a student has achieved at least a 2.0 GPA, the student may begin practice and if the student still has at least a 2.0 GPA at the end of nine weeks, he/she will be eligible the tenth week.
- If the most recent grading period is nine weeks, the school may check the student's grades at six weeks and allow the student to begin practice if the student has achieved at least a 2.0 GPA. At the end of the grading period (nine weeks in this case), the student will be eligible the tenth week if the 2.0 or better has been maintained.

10. How is the GPA computed if a student fails a class in summer school?

Answer: All summer school grades will be considered in determining a student's eligibility for the following semester.

11. If a student has a 2.0 at the end of the second semester and chooses to go to summer school, can he/she lose their eligibility if they fail classes?

Answer: No. Previous semester GPA can't be lowered by summer school grades.

12. If a student fails second semester English, can it be made up in summer school?

Answer: Yes, however, when determining the GPA, both grades (second semester and summer school) must be averaged.

13. What happens if a student has an incomplete?

Answer: All incompletes will be computed as an "F" until made up. This applies to the C-Rule only and not the West Virginia Secondary School Activities Commission Scholarship Rule.

14. If a student comes from an elementary school and does not have a 2.0 average, is he or she eligible?
- Answer: Yes. Any student entering the sixth grade of a middle school for the first time will be eligible. This student must have a "C" average at the end of the first semester to remain eligible.
15. What happens if a student transfers from out of state?
- Answer: He or she must have a 2.0 average in the school previously attended for the previous semester.
16. What happens if a student transfers from another county which has numerical grades?
- Answer: The numerical grades must be changed to letter grades using the sending county's grading scale.
17. If a student moves in from another state and the school had a weighted grading scale, how do you compute his/her average?
- Answer: A weighted grading scale cannot be used. Every grade will be converted using the four point scale and then computed.
18. Can a second semester class be wiped out or deleted after attending summer school in computing the 2.0 average?
- Answer: No. All classes taken during the second semester and summer school will be used in computing the GPA.
19. May a student repeat a class for which he or she has received a low grade in summer school or during a regular semester to raise the GPA?
- Answer: The criteria for retaking a course depends upon local school and/or county policy. However, the method of computation would be the same as those used for averaging summer school classes.
20. If a student has established eligibility for the semester, can he lose eligibility prior to the end of the semester?
- Answer: No.
21. What happens if a student withdraws from a class?
- Answer: Local policies regarding withdrawal from class must be followed. Grades recorded will be calculated as in questions 20, 21, and 22.
22. In determining eligibility, how are classes for which pass/fail grade averaged?
- Answer: Pass/fail classes must be included only if the student failed the class.
23. What classes must be considered in computing the "C" average for eligibility?
- Answer: All subjects that are undertaken by a student and for which a grade is recorded.
24. Are there activities not considered when computing eligibility?
- Answer: Yes. Study Hall, non-graded classes and audited classes are not considered when computing the average.
25. Does a student need to meet any other scholarship rule in order to participate in extracurricular activities?
- Answer: Yes. Students must meet all rules and regulations of the WVSSAC and rules of local board of education.
26. Does a team manager need to have a C-average?
- Answer: Yes, all student assistants must have a C-average.
27. How do you compute grades if a student is taking three different courses in Vo-Tech school?
- Answer: Each grade for the three courses will be considered in computing the average.

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**127CSR3**

**TITLE 127**

**LEGISLATIVE RULE**

**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION**

**SERIES 3**

**PROVISIONS GOVERNING CONTESTS**

**§127-3-1. General.**

1.1. Scope. — These rules govern the conduct of athletic contests.

1.2. Authority. — W. Va. Constitution, Article XII, §2, and W. Va. Code §§18-2-5, 18-2-25, 18-2-25a, and 18-2-25b.

1.3. Filing Date. — July 13, 2021.

1.4. Effective Date. — September 13, 2021.

1.5. Repeal of Former Rule. — This legislative rule amends W. Va. 127CSR3, West Virginia Secondary School Activities Commission Series 3, Provisions Governing Contests, filed July 13, 2021, and effective September 13, 2021.

**§127-3-2. Duties and Responsibilities of the Principal.**

2.1. The principal of each member school is recognized as the school representative and as such is accountable to the West Virginia Secondary School Activities Commission (WVSSAC/Commission) for conduct of the athletic programs of that school.

2.2. The principal or designee shall notify coaches and faculty (§1273-6) of the rules and regulations of this Commission. It shall be that individual's responsibility to notify those students participating in WVSSAC activities. Failure of the principal in performing this responsibility will not prevent the Commission from enforcing its rules and regulations.

2.3. The principal shall have the authority to delegate responsibilities or duties; however, such delegation shall not relieve the principal of responsibility for any infraction of the rules and regulations of this Commission by coaches and faculty.

2.4. The principal has the authority to designate a member of the faculty who must supervise all interscholastic activities.

2.5. The principal is responsible for adequate team and crowd control measures at home contests in which the school participates, assuring that the school's participants and fans conduct themselves in a proper manner, and assuring that all fans and officials are provided adequate protection. In situations where contests are played on neutral sites, the responsibilities will be shared by participating school principals.

2.6. The principal has the right to exclude a contestant who would not represent the school in an appropriate manner, a student who fails to maintain a satisfactory scholastic standing, or a student who has been excluded for a serious illness or injury.

**127CSR3**

2.7. The principal will be responsible for signing all game contracts, seeking sanctioning of necessary events, and signing all certificates of eligibility prior to student participation.

2.8. The principal may designate the assistant principal or other faculty member to provide representation and/or to participate in all voting matters at a Board of Control meeting which is further explained in the Constitution.

2.9. The principal shall have such other powers as will encourage the growth, development and expansion of the athletic program for the welfare of the students, the school, and the WVSSAC.

2.10. The principal, assistant principal, and athletic director of each member school shall be admitted to any WVSSAC sanctioned event. Vocational principals and assistant principals shall also be admitted. This admittance will be by presentation of the WVSSAC Courtesy Card and a photo identification.

2.11. The principal and assistant principal of each member school, who upon retirement is a member in good standing with the WVSSAC, shall receive a WVSSAC permanent Courtesy and Identification Card. This card shall allow admittance to any WVSSAC sponsored event. This admittance will be by presentation of the WVSSAC Courtesy Card and photo identification. Spouses of deceased principals and assistant principals shall have a WVSSAC permanent Courtesy and Identification Card with the same admittance stipulations transferred to them upon request to the WVSSAC.

2.12. WVSSAC Courtesy and Identification Cards shall be honored at all events involving WVSSAC member schools with the exception of state tournaments.

**§127-3-3. Physical Examination — Parental Permission.**

3.1. The Athletic Participation/Parental Consent/Physician's Certificate Form allows for annual updates rather than a complete physical examination.

3.2. A student shall not be permitted to engage in interscholastic practice or participate in an interscholastic contest until that student has filed with the principal a completed Athletic Participation/Parental Consent/Physician's Certificate Form. This form must be signed by all parties: student, parent(s), physician. Consent and approval for sport(s) in which a student is requesting participation must be approved by both parent and physician.

3.3. A physical examination form must be completed no earlier than May 1 for an upcoming year. The physical is valid until completion of the last WVSSAC state tournament during the next academic year.

**§127-3-4. All-Star Participation.**

4.1. Only a graduating senior, or any student completing athletic eligibility at the end of the current academic year because of age or completion of semesters of eligibility, may play in one All-Star game upon conclusion of each season without loss of athletic eligibility for the balance of that year. (Revised 2019-20)

**§127-3-5. Awards.**

5.1. Only a member school or a school sponsoring a sanctioned event may give the following awards to a student or team: medal, trophy, cup, certificate, ribbon, plaque, unattached letter, unattached chevron, or any similar award.



**127CSR3**

5.2. A student may accept on an individual or team basis the above specified awards in the following situations:

5.2.a. from a member school for participation;

5.2.b. in a sanctioned event;

5.2.c. in a non-sanctioned event, at any time in the following sports: cheerleading, cross country, golf, swimming, tennis, track, or wrestling;

5.2.d. in a non-sanctioned event, but not during the school sports season for the following sports: football, basketball, volleyball, baseball, lacrosse, softball, or soccer.

5.3. A student may not receive the following awards with a retail value that exceeds \$100.00:

5.3.a. Apparel—sweaters, jackets, jerseys, shoes, etc.

5.3.b. Equipment—radio, televisions, etc.

5.3.c. Athletic goods—batons, tennis rackets, bats, golf bag, tennis or golf balls, etc.

5.3.d. Money (scholarships to institutions of higher learning are exempted.)

5.4. Purchase of an item as identified in §127-3-5.3, whereby any portion is donated by a school, booster club, auxiliary agency, or any other group or organization is prohibited.

5.5. Nothing in §127-3-5 shall be interpreted to affect the recognition of scholarship or scholastic achievements.

**§127-3-6. Coaches.**

6.1. A member of a school faculty, substitute teacher, or student teacher, with West Virginia Department of Education (WVDE) Authorized Certification, shall be allowed to coach an athletic team. A member of a private/parochial school faculty, substitute teacher, regardless of WVDE certification status, shall be allowed to coach an athletic team. An authorized certified individual may coach if they meet all of the requirements in §127-3-6.4.

6.2. A public school substitute teacher is defined as a person who has met the licensure requirements as specified by the West Virginia Board of Education (WVBE) and has been approved as a substitute teacher of that county board of education. Private/parochial school substitutes must meet requirements of respective governing bodies.

6.3. A college student fulfilling teacher training responsibilities as a student teacher may be assigned certain coaching responsibilities during that period of training. This assignment will be administratively consistent with the student teacher's role in the classroom, and shall be approved by the county board of education or the governing body of a private/parochial school. The student teacher will work directly under the supervision of the appointed coach or assistant coach.



**127CSR3**

6.4. An authorized certified coach must meet the following requirements:

6.4.a. The coach is employed under a contract with a county board of education which specifies a rate of pay equivalent to the rate for professional educators who accept similar duties as extra duty assignments and which provides for liability insurance associated with the activity;

6.4.b. The coach has successfully completed approved training: NFHS Sport Science, Sport First Aid, and WV Component (14 hours of instruction and test) and has received WVDE Authorization;

6.4.c. Coaching authorizations are for one year.

6.5. The head coach shall be required to attend any sports rules clinic in the coaching assignment which is sponsored by this Commission. Schools failing to have a head coaching position filled at the time of the clinic will be required to have a school representative present at the rules clinic.

6.6. All coaches, athletic directors, and band directors of member schools who, upon retirement from a full time teaching, school service, or administrative position at a member school, have at least 20 years of service as a coach, athletic director, band director, or combination thereof shall receive a lifetime WVSSAC Courtesy and Identification Card. This card shall allow admittance to any WVSSAC sponsored event. This admittance will be by presentation of the WVSSAC Courtesy and Identification Card and photo identification. Spouses of deceased coaches, athletic directors, and band directors shall have a WVSSAC permanent Courtesy and Identification Card with the same admittance stipulations transferred to them upon request to the WVSSAC. (Revised 2019-20)

**§127-3-7. Out-of-Season Coaching. (Revised 2016-17)**

7.1. Philosophy — A student should have the opportunity to engage voluntarily in school athletic activities provided that the student is eligible, that such activities do not interfere with the student's educational development and their activities do not conflict with the principles of wholesome amateur athletics. The WVSSAC discourages the exploitation of students by overzealous individuals and organizations who attempt to impose an obligation or pressure on the student. Athletic participation should be used for the pleasure and satisfaction that is derived from athletic competition in a variety of experiences.

7.2. School organized out-of-season practice or related activities shall be permitted with principal approval during three consecutive weeks established by each county board of education or by the governing body of a private/parochial school. These three consecutive weeks may begin on or after Monday of Week 49, and must conclude by Friday of Week 4 of the NFHS Standardized Calendar; provided, there will be no out-of-season practice or related activities during the week of July 4<sup>th</sup> as determined by the NFHS Standardized Calendar (refer to handbook appendix). Participation must be open to all students, voluntary, and not required directly or indirectly for membership on a school team. Participation by students during these weeks does not meet §127-2-13.4.

7.2.a. With principal approval, each sport program may use **twelve** "flex-days" from Monday of Week 49 through Friday of Week 48 of the next academic year. A flex-day is a day, outside the regular season and outside the three week practice window, when a coach may have sport-specific contact with student athletes. Flex-days shall not be used during the first week of each high or middle school sport season. Use of any part of a day for an activity will count as a full day of activity. (Revised 2020-21)

**127CSR3**

7.3. A coach or principal designee of each sport or activity may be present as an observer, lecture participant, staff member, [or in any capacity at any summer camp] during weeks established in §12737.2 and §127-3-7.2.a.

7.4. A coach or designee shall not work with individuals in any form of drills or practice of the grade level coaching assignment and preceding grade level except during those dates specified as the season for that specific sport or as designated in §§127-3-7.2, 127-3-7.2.a, and 127-3-7.3 of this rule.

7.5. Coaches may participate in a formal development program of the United States Olympic Committee (USOC) involving students of the same sport as their coaching assignments. The formal development program must be under the official guidance of the USOC through the National Governing Body (NGB) of the sport. The NGB must assure in writing to the WVSSAC that coaches will receive formal orientation and that strict supervision and monitoring of coaches will ensure that no recruitment or inappropriate influence will be exerted on students.

7.6. Conditioning/Recreation Programs — Throughout the academic year, students who are not participating in a school's athletic program may voluntarily participate in an off-season conditioning program. This program also may occur during the summer, subject to county board of education or governing body approval and the following provisions:

7.6.a. Participation in the program must be open to all students enrolled in the school providing the program.

7.6.b. Participation is voluntary and is not required directly or indirectly for membership on a school team.

7.6.c. Students will provide their own clothing (sweatsuit, shoes, etc.).

7.6.d. Activities will be limited to running, weight training, and stretching exercises. Agility drills that do not involve specific skills of a given sport are permitted.

7.6.e. Specific equipment pertaining to a given sport may not be used. This includes such items as footballs, basketballs, volleyballs, wrestling mats, discuses, etc.

7.6.f. In cases where schools schedule all students into the last period of the school day, the guidelines in §§127-3-7.6.c, 127-3-7.6.d, and 127-3-7.6.e shall apply unless the class is considered a part of the physical education program and credit is earned. There shall be no teaching of sport specific skills in this case unless those same skills and course of study are taught in all physical education classes at this same time of the academic year.

7.6.g. The county board of education may choose to compensate the supervisor or director of conditioning/recreation programs.

7.7. Coaches may not promote, initiate, organize, supervise, or participate in out-of-season events involving students of the same sport as the grade level coaching assignment and preceding grade level except as specified in §§127-3-7.2, 127-3-7.2.a, and 127-3-7.3. The county board of education shall be authorized to approve a coach to organize and/or supervise a recreation program for students. However, this type assignment must be recreational in nature, include a variety of activities, and comprise no coaching or in-

**127CSR3**

struction of that same sport as the school coaching assignment. In addition to the above, gymnasiums or facilities opened for recreational activities must use the following requirements:

- 7.7.a. The gymnasium or field is open to all students for participation.
- 7.7.b. Various activities are available to students and are not limited to one sport or activity on a given day.
- 7.7.c. Supervisor or director must be approved by the county board of education or governing body.
- 7.7.d. There is no coaching or instruction in the skills and technique in any sport.
- 7.7.e. Comparable opportunities are provided both sexes.
- 7.7.f. Participation is voluntary and is not required directly or indirectly for membership on a school team.
- 7.8. The principal is responsible for adherence to these requirements.

**§127-3-8. Forfeit and Restitution.**

8.1. A written request for investigation of an eligibility issue in any sport may be filed by a member school principal with the WVSSAC Executive Director. Individual and/or team awards will not be affected if the request is filed more than 42 calendar days past the conclusion of the State Championship in that sport.

8.2. When a student is declared ineligible subsequent to competing as an individual, or a penalty has been imposed or action taken by the WVSSAC, the student's performance shall be stricken from the records and the points contributed to the team total deleted. The team standings will be adjusted accordingly, and any awards received shall be returned.

8.3. When a student is declared ineligible subsequent to representing the school in team competition or a penalty has been imposed by the WVSSAC, the contest(s) may be forfeited. The team standing in the final standing will be adjusted, and the team awards and the ineligible student's awards may be returned.

8.4. If a team, or student participating in an individual contest, leaves the playing area in protest and fails to complete the contest, the contest is forfeited and the school principal or designee and the violator may be required to appear before the WVSSAC Executive Director to indicate why additional action should not be taken.

8.5. If a coach is ejected from a contest and an assistant coach or assigned school representative is not available to continue as coach, the contest is terminated and forfeited to the opponent.

8.6. If a student is deemed ineligible under WVSSAC rules, but participates in interscholastic competition in accordance with the terms of a court order or injunction, and the order or injunction ultimately otherwise adjudicated so that injunctive relief is/was not warranted, any one of the following actions may be taken in the interest of fairness or restitution to the competing schools:-

8.6.a. Require that individual or team performance records achieved during participation by such ineligible student shall be vacated or stricken; or

**127CSR3**

8.6.b. Require that team or individual victories be forfeited to opponent(s); or

8.6.c. Require that team or individual awards earned by such individual or team be returned to the Commission.

**§127-3-9. Game Officials.**

9.1. All officials utilized in interscholastic games and contests in West Virginia must be registered with the WVSSAC, except in the case of emergency, §127-3-9.4 may be invoked. A game officials' registration plan shall be established by the WVSSAC Board of Directors (Board of Directors).

9.2. Officials for interscholastic contests shall be agreed upon mutually by the competing schools at least two weeks before the scheduled date of contest. Coaches or other persons connected with competing schools shall not officiate at the contest unless all competing consent.

9.3. The host school initiates the selection of game officials. It is highly recommended that the host school contract officials for all interscholastic contests. Contractual agreements are between the school and the official.

9.4. The WVSSAC Executive Director shall be empowered to authorize the use of non-registered officials for athletic contests where registered officials are not available and scheduled athletic contests risk cancellation.

9.5. All officials registered with the WVSSAC are subject to and required to abide by the rules and regulations set forth in these rules and the "West Virginia Secondary School Activities Commission Officials' Handbook", which is revised and published yearly. WVSSAC registered officials are provided the same opportunity for appeal of any decisions as set forth in the rules.

9.6. The official shall:

9.6.a. Attend a state WVSSAC rules clinic in the sport for which the official is registered. Failure to comply will result in suspension for that year.

9.6.b. Attend four local Officials' Board meetings. Failure to comply will result in suspension for that year.

9.6.c. Take Part I and Part II NFHS Rules Examinations in the sports where specified. Failure to take Part I will result in a five point deduction for the purpose of classification at the end of that sport season. Failure to take Part II Exam will result in suspension the following year.

9.6.d. Abstain from consuming intoxicating beverages on the day of the assigned contest prior to and during the contest, and after, in the vicinity of the playing area of the contest.

9.6.e. Abstain from the use of smokeless or any other forms of tobacco in the vicinity of the playing area of the contest.

9.6.f. Abstain from the use of illegal drugs.

**127CSR3**

9.6.g. Be fair, impartial, unbiased, professional, and competent in officiating.

9.6.h. Be in and maintain proper physical and mental condition as verified by the physical examination form submitted to the WVSSAC; dress and appearance must be appropriate.

9.6.i. Be at the site of the contest in adequate time to care for necessary pre-contest duties or as specified in the NFHS Rules.

9.6.j. Maintain self-control under all conditions.

9.6.k. Refrain from commenting upon or discussing a team, play, game situation, or fellow official.

9.6.l. Conduct the game so as to enlist the cooperation of students, coaches, and spectators in the interest of good sportsmanship.

9.6.m. Comply with any WVSSAC rule, regulation, Constitution, or directive, and particularly those regulations pertaining to filing Special Reports and Official Ratings of Schools.

9.6.n. Honor all existing officiating contracts with member schools unless a valid reason is presented and accepted by the involved school. Accepting a game involving a higher level of competition is not a valid reason to cancel a contract. (Revised 2019-20)

9.6.o. Comply with local board rules as set forth in board regulations.

9.7. The WVSSAC Executive Director shall have the power to penalize for violations of these rules. Any official penalized under these rules shall have the right to appeal to the Board of Directors. The WVSSAC Executive Director shall inform fully a penalized official of appeal rights.

**§127-3-10. Classification. (Revised 2019-20)**

10.1. Excluding boys and girls basketball, each member high school shall be classified as either AAA, AA, or A based on the enrollment figures in grades 9, 10, 11, and 12 at the end of the second school month of the odd numbered year preceding the classification. (Revised 2011-12; 2018-19)

10.2. Excluding boys and girls basketball, classification of member high schools shall be determined every four years on the even numbered years and will remain in effect for a four year period unless the school experiences a 20% change in enrollment using WVDE enrollment figures at the end of the second school month. Classification changes due to a 20% change in enrollment becomes effective next academic year.

10.3. A school may choose to compete in WVSSAC tournaments in any class above its classification providing proper notification is made to the WVSSAC prior to Friday of week 27 after classification has been approved by the Board of Directors. Approval of this option will be for a four year period and will be effective for individual sports sponsored by the school.

10.4. Excluding boys and girls basketball, the Board of Directors may structure the WVSSAC tournament series in each sport by classification (AAA-AA-A). Each sport will be structured according to the level of interest and accommodation for tournament alignment. The WVSSAC will conduct a survey of the membership prior to any change of structure of any given sport.



**127CSR3**

10.5. Excluding boys and girls basketball, if a consolidation of two or more member schools occurs during the classification period, the new member school will be reclassified based on the combined enrollment of 9, 10, 11, and 12 in the consolidating schools.

10.6. Each member high school shall be classified in boys and girls basketball as either AAAA, AAA, AA, or A based on a total score given by the classification model that considers the following factors: enrollment, location and economics. For an explanation of the classification model, and how scores are assigned, see Glossary.

10.7. Classification of member high schools in boys and girls basketball shall be determined in the next regular reclassification year and will remain in effect for a two year period unless the school experiences a 20% change in enrollment using WVDE enrollment figures at the end of the second school month and qualifies to be moved according to the classification model. Classification changes due to a 20% change in enrollment and the classification model becomes effective next academic year.

10.8. A school may choose to compete in WVSSAC tournaments in one class above its classification in boys and girls basketball providing proper notification is made to the WVSSAC prior to April 1 of a new classification year. Approval of this option will be for a two year period and will be effective for individual sports sponsored by the school.

10.9. In boys and girls basketball, the Board of Directors may structure the WVSSAC tournament series in each sport by classification (AAAA-AAA-AA-A). Each sport will be structured according to the level of interest and accommodation for tournament alignment. The WVSSAC will conduct a survey of the membership prior to any change of structure of any given sport.

10.10. If a consolidation of two or more member schools occurs during the two year period, the new member school will be reclassified in boys and girls basketball based on the classification applied to the newly classification model applied to the new consolidated school consolidated school.

10.11. No member school shall, based on the classification, be compelled to play more than one class up from where it would be classified in a four class system based strictly on enrollment.

**§127-3-11. Exchange of Eligibility Certificates.**

11.1. Commission approved eligibility certificates are required at the beginning of the season of each sport and prior to the first contest.

11.2. The principal is responsible for the proper completion of the certificate.

11.3. The names of the students on all middle school, 9<sup>th</sup> grade, junior varsity and varsity teams shall be submitted on the school's master eligibility.

11.4. Student additions to the team must be certified immediately on an eligibility certificate submitted to the WVSSAC. (Revised 2007-08)

11.5. Principals will verify student eligibility using birth certificates to confirm a student's age. Disputed cases shall be reviewed and approved by the WVSSAC Executive Director prior to participation.

**127CSR3**

11.6. Changes to a student's age, number of semesters of attendance or semester credits on an eligibility certificate must be reported to and approved by the WVSSAC prior to participation.

11.7. Schools that fail to send the required eligibility information to the WVSSAC prior to the first contest will be assessed a fine of \$25.00 payable to the WVSSAC. (Revised 2007-08)

**§127-3-12. Legal Opponents.**

12.1. WVSSAC member schools shall not participate against any public, private, or parochial secondary school whose status has not been recognized by that group's governing body.

12.2. WVSSAC member schools shall not participate against schools that have been placed under a specified sanction, including member schools and outofstate schools.

12.3. WVSSAC member schools shall not participate in any interscholastic contest or practice against non-school teams or involving alumni participants.

**§127-3-13. Contracts.**

13.1. All interscholastic contest contracts shall be prepared in duplicate on forms furnished by the WVSSAC. Contracts should include specific dates, financial guarantee provisions, adequate forfeiture stipulations, and all other items listed on the contract.

13.2. In order for a contract between two schools to be binding, it must be signed by the principal or designee of both schools.

13.3. Contracts between both schools may be canceled in the following situations:

13.3.a. If either principal or designee fails to sign the contract.

13.3.b. If either school is forced to suspend its school schedule.

13.3.c. If one school fails to return the signed contract to the other school within 30 days of receipt.

13.3.d. Upon written mutual consent of the contracting parties.

13.3.e. The Board of Directors may annul a contract when deemed necessary for the furtherance of interscholastic athletics in West Virginia, or when provisions of the contract are contrary to Commission rules.

13.4. Contracts executed by the principal are binding on the principal's successor.

13.5. A school will forfeit an athletic contest during regular season or scheduled tournament play if cancellation is caused by teachers, support personnel, or school patrons acting as a striking body. If both participating schools are affected by strike, cancellation shall be considered no contest. Regular season cancellation may be rescheduled during that same season by agreement of the involved parties and the Board of Directors. (Revised 2019-20)

**§127-3-14. Sunday Contests.**

**127CSR3**

14.1. WVSSAC member schools shall not engage in any practice, contest, meet, or tournament on Sunday. However, in case of emergency, State Championship finals may be played on Sunday after 1:00 p.m.

14.2. Sunday practice shall be defined as any team, group, or individual meeting to view films, hold shooting practice, or any other activity associated with the sport.

**§127-3-15. Sports Rules — Game Protests.**

15.1. The current edition of official High School Rules published by the NFHS are the official rules used in contests, meets, and tournaments played by WVSSAC schools. The Board of Directors may modify such rules as provided by the NFHS. Any modified rules published in special bulletins or "The Interscholastic" shall apply.

15.2. In the absence of published NFHS rules, the Board of Directors may authorize competition under prevailing rules and regulations as modified for amateur competition.

15.3. Contests or ejections shall not be protested. Accordingly, the Board of Directors is not authorized to order contests replayed or ejections reconsidered.

**§127-3-16. Sanctioning and Travel.**

16.1. A member school shall not enter a contest/competition which requires sanctioning until it is approved by the WVSSAC.

16.2. All applications for sanctioning must be submitted to the WVSSAC 30 days prior to the event, with the exception of international events.

16.3. Events requiring NFHS approval are:

16.3.a. Co-sponsorship Sanction Requirement: Any interstate event involving two or more schools, which is co-sponsored by or titled in the name of an organization outside the high school community (e.g., a university, a theme park, a shoe company), in addition to being sponsored by a member school, an approved school, or a state association, shall require sanction of the NFHS office.

16.3.b. Non-bordering State Sanction Requirement: Each state association shall sanction through the NFHS office interstate competition by a member school involving either:

16.3.b.1. More than eight schools, at least one of which is from a state that does not border the host state; or

16.3.b.2. Five or more states, at least one of which does not border the host state.

16.3.c. International Event: Each member state association shall approve and receive NFHS approval for competition by a member school against a school from a foreign country, except for two school and three school competition with a school or schools from Canada or Mexico which necessitates a round trip of less than 600 miles.



**127CSR3**

16.3.d. International Event: Games against Canadian or Mexican schools involving travel of greater than 600 miles, or an event involving more than three schools, one or more of which are from Canada or Mexico, requires a request to the NFHS for international sanction and notice to and sanction by the appropriate National Governing Body.

16.4. Bordering state events requiring approval are:

16.4.a. Any interstate event in which four or more schools participate. (All schools from neighboring states.)

16.4.b. Any interstate event which involves schools from three or more state high school associations.

16.5. Intrastate events requiring approval are:

16.5.a. An event with more than four schools participating; or

16.5.b. Any event where awards are given.

16.6. The WVSSAC may assess a fine and/or other penalties against the participating school for violations of the sanction provisions.

16.7. A member school shall not enter an event that involves travel of more than 600 miles round trip unless it occurs on days when school is not in session. The WVSSAC must sanction the event.

**§127-3-17. WVSSAC Tournaments.**

17.1. Participation in Commission sponsored and directed sectional, regional and state tournaments exclusively shall be limited to WVSSAC member schools. (Revised 2019-20)

17.2. The Board of Directors shall divide the state into sections and regions for the purpose of determining championships in Commission sponsored sports. The Board of Directors shall direct and arrange for tournaments, meets, and contests leading to and including state championships. The WVSSAC will provide member school principals the opportunity to review and comment on the alignment prior to the presentation to the Board of Directors. Principals will sign a form to verify receipt and return the form to the WVSSAC office within ten days from the date of the bulletin.

17.3. The Board of Directors shall have general control over sectional tournaments. The detailed management of these sectional tournaments, however, shall be under the control of the schools assigned to each respective section.

17.4. All net earnings from tournaments conducted under the supervision of the Board of Directors shall be turned over to the Commission unless otherwise specified by the Board of Control. Sectional or regional assessments may be charged to cover the cost of a tournament trophy furnished by the WVSSAC.

17.5. The Board of Directors may approve participation by member middle schools in county, league or conference tournament. Tournament play on the state level for member middle schools is prohibited.

17.6. State tournaments conclude only after all games, matches, or events are completed.

**127CSR3****§127-3-18. Season Regulations.**

18.1. The Commission uses the NFHS standardized calendar to schedule all activities. Each sport season shall have an established beginning and ending date for practice and interscholastic contests based on a standardized calendar.

**§127-3-19. Baseball.**

19.1. Rules: Baseball rules published by the NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modifications.

19.2. Organized Team Practice: Organized team practice will begin Monday of Week 35 and the first contest may be played on Wednesday of Week 37.

19.3. Length of Season: The baseball season ends for each team by WVSSAC tournament elimination.

19.4. Maximum Team Contests: A baseball team is permitted to play no more than 32 games exclusive of sectional, regional, and state tournament contests.

19.5. Scrimmages: Teams may conduct two baseball scrimmages with another high school. (See Glossary.)

19.6. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

**19.7. Student Participation:**

19.7.a. A student may not play or practice on a non-school baseball team while a member of the school team.

19.7.b. A student shall not participate in more than 32 games in one season, exclusive of sectional, regional, and state tournament contests. Serving as a "courtesy or pinch runner" is not considered "participation" in a game.

19.8. During the sport season, a student may accept awards only in WVSSAC sanctioned events. Awards must comply with §127-3-5. Outside the sport season, students may accept only compliant awards in non-sanctioned events.

19.9. Middle Schools — The above will apply for middle schools with following adaptations:

19.9.a. Middle school teams may play 18 games including tournaments sanctioned by the WVSSAC.

19.9.b. Middle school season will be completed by Saturday of Week 45.

19.9.c. Middle school teams are permitted one scrimmage. (See Glossary.)

**§127-3-20. Basketball (Boys and Girls).**

**127CSR3**

20.1. Rules: Basketball rules published by the NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modification.

20.2. Organized Team Practice: Organized team practice for girls will begin on Monday of Week 19 and Monday of Week 20 for boys. The first contest for girls may be played on Tuesday of Week 22 and Tuesday of Week 23 for boys.

20.3. Length of Season: The boys' and girls' basketball seasons will end for each team at tournament elimination.

20.4. Maximum Team Contests: A varsity or junior varsity basketball team will be permitted to play no more than 22 games in the regular season exclusive of sectional, regional, and state tournament contests.

20.4.a. The maximum number of quarters for a student in one season is 110 exclusive of sectional, regional, and state tournament contests.

20.4.b. A student can play only five quarters in one day.

20.4.c. Participation in a quarter, regardless of time, will be considered one quarter.

20.4.d. Overtime is considered as an extension of the fourth quarter.

20.5. A high school basketball team is permitted to participate in a preview and a scrimmage or two scrimmage games. (See Glossary.)

20.6. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

20.7. A student may not play or practice on a non-school team while a member of the school team.

20.8. During the sport season a student may accept awards only in WVSSAC sanctioned events Awards must comply with the §127-3-5. Outside the sport season, students may accept only compliant awards in non-sanctioned events.

20.9. Middle Schools — The above rules will apply for middle schools with the following adaptations: (Revised 2018-19)

20.9.a. Girls may begin practice on Monday of Week 18 and boys on Monday of Week 19. The first contest for girls may be played on Wednesday of week 21 and Wednesday of week 22 for boys.

20.9.b. The girls basketball season will end on Saturday of Week 33 and Saturday of Week 34 for boys.

20.9.c. Tournament play on the state level shall be prohibited.

20.9.d. Boys and girls basketball teams will be permitted to play no more than 20 games. Tournament exception does not apply.

20.9.e. All middle students may play a maximum of 100 quarters for one season.

20.9.f. All middle students may play a maximum of five quarters per day. (Revised 2019-20)

**127CSR3**

20.9.g. A member school sponsoring games involving teams which combine students in 7<sup>th</sup> and 8<sup>th</sup> grades must play those games in quarters of six minutes.

20.9.h. Middle schools are not permitted to play an alumni game.

20.9.i. Scrimmages: Middle school teams are permitted one scrimmage. (See Glossary.)

**§127-3-21. Cheerleading.**

21.1. Rules: Cheerleading rules published by the NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modification. (Revised 2010-11)

21.2. Organized Practice: Organized team practice will begin on Monday of Week 5.

21.3. Length of Season: The high school spirit and competitive season will begin Monday of Week 5. The competitive season will end for each team at their cheer tournament elimination. The high school spirit season will end on the last day of the Girls' State Basketball Tournament or Boys' State Basketball Tournament.

21.4. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

21.5. A student may accept awards in WVSSAC sanctioned events and non-sanctioned events during the entire year. These awards must be consistent with the items specified in §127-3-5.

21.6. Middle Schools — The above rules will apply for middle schools with the following adaptations:

21.6.a. Organized Team Practice: Organized team practice will begin on Monday of Week 6.

21.6.b. The middle school spirit and competitive cheer season will begin Monday of Week 6. The competitive season will end Saturday of Week 18. The middle school spirit season will end on the last day of the middle school girls' or boys' basketball season.

**§127-3-22. Cross Country (Boys and Girls).**

22.1. Rules: Cross country rules published by the NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modification.

22.2. Organized team practice will begin on Monday of Week 5 and the first meet may be held on Saturday of Week 7.

22.3. Length of Season: The cross country season will end for each team or individual at tournament elimination.

22.4. Maximum Team Contests: A cross country team will be permitted 16 meets exclusive of regional and state contests.

22.5. Scrimmages: Schools may conduct two cross country scrimmages with another high school may be conducted. (See Glossary.)

**127CSR3**

22.6. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

22.7. A student may accept awards in WVSSAC sanctioned events and non-sanctioned events during the entire year. These awards must be consistent with the items specified in the §127-3-5.

**§127-3-23. Football.**

23.1. Rules: Football rules published by the NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modification.

23.2. Organized Team Practice: Organized team conditioning practice will begin on Monday of Week 5 and the first contest may be played during Week 8.

23.2.a. The following table establishes for high school the **equipment/contact level**, earliest date for scrimmage or GridORama, date for first contest, and date season must be completed.

Year	First Date Organized Practice Helmets Only No Contact	First Date Helmet & Shoulder Pads Soft Equipment Contact Bag, shields sleds, tackling wheel, etc.	Full Pads Soft Equipment Contact Bag, shields sleds, tackling wheel, etc.	Full Pads Full Contact	Earliest Scrimmage Or Grid-O-Rama After 4:00 PM	First Contest	Date Season Must Be Completed
2021	Aug. 2 & 3	Aug. 4 & 5	Aug. 6	Aug. 7	Aug. 13	Aug. 23	Nov. 6
2022	Aug. 1 & 2	Aug. 3 & 4	Aug. 5	Aug. 6	Aug. 12	Aug. 22	Nov. 5
2023	Jul 31 & Aug. 1	Aug. 2 & 3	Aug. 4	Aug. 5	Aug. 11	Aug. 21	Nov. 4
2024	Aug 5 & 6	Aug. 7 & 8	Aug. 9	Aug. 10	Aug. 16	Aug. 26	Nov. 9
2025	Aug. 4 & 5	Aug. 6 & 7	Aug. 8	Aug. 9	Aug. 15	Aug. 25	Nov. 8

23.2.b. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

23.2.c. In season football camps sponsored by a member school or by other school related organizations where football coaching and instruction are given are not permitted.

23.2.d. The use of football uniforms, protective equipment, tackling or blocking dummies, charging sleds, or similar devices are strictly prohibited during the conditioning program. During the date of pads no live contact, the use of sleds, shields, and blocking dummies is allowed to permit gradual adaptation of the students to carrying the weight of their pads and adjusting to temperature variation.

23.3. Length of Season: The football season will end for each team at the end of the regular season or by play-off elimination.

23.4. Maximum Team Contests: A football team will be permitted to play no more than 10 games exclusive of the play-off games.

23.4.a. The total number of quarters for a student in one season is 50 exclusive of the play-off games.

23.4.b. A student may only play four quarters in one day.

**127CSR3**

23.4.c. Any student who participated in one or more downs in one quarter shall be charged with one quarter of play. Downs in which the football teams are in a free kick formation, or the offensive team is in a scrimmage kick formation, as defined in the NFHS Football Rule Book, will not count as a down.

23.4.d. Overtime is considered as an extension of the fourth quarter.

23.4.e. Interscholastic practice game in which teams representing a member school play against alumni or others is not be allowed.

23.5. A football team is permitted to participate in a Grid-O-Rama and one preseason scrimmage or two preseason scrimmages. (See Glossary for definitions of Grid-O-Rama and Scrimmage.)

**23.6. Special Regulations:**

23.6.a. All rules and regulations of these bylaws pertaining to football are also applicable to sixman and eight-man football.

23.6.b. Any member of a freshman team who plays in a varsity contest (scrimmage, Grid-o-Rama or game) is ineligible to return to the freshman team.

23.6.c. A student may not play or practice on a non-school football team while a member of the school team.

23.7. A student may accept awards for WVSSAC sanctioned and non-sanctioned events during the entire year. These awards must be consistent with the items specified in the §127-3-5.

23.8. The Board of Directors is authorized to adopt a point rating system and overall procedure for determining a state champion in each class.

23.9. Middle Schools: The above rules will apply for middle schools with the following adaptations:

23.9.a. Organized team conditioning practice will begin on Monday of Week 6 and the first game played during Week 9.

23.9.b. The following table establishes the first date for organized practice, the first date pads with no live contact, the first date for live contact, earliest date for a scrimmage, the date for first game and the date season must be completed.

<b>Year</b>	<b>First Date Organized Practice</b>	<b>Pads No Live Contact</b>	<b>Contact Allowed Full Equip.</b>	<b>Date For Scrimmage</b>	<b>Earliest For First Game</b>	<b>Date Season Must Be Completed</b>
2021	Aug. 9	Aug. 16	Aug. 19	Aug. 23	Week 9	Oct. 30
2022	Aug. 8	Aug. 15	Aug. 18	Aug. 22	Week 9	Oct. 29
2023	Aug. 7	Aug. 14	Aug. 17	Aug. 21	Week 9	Oct. 28
2024	Aug. 12	Aug. 19	Aug. 22	Aug. 26	Week 9	Nov. 2
2025	Aug. 11	Aug. 18	Aug. 21	Aug. 25	Week 9	Nov. 1

23.9.c. The football season will end on Saturday of Week 17.

23.9.d. Not more than eight interscholastic football games shall be played, excepting one league playoff game. There shall be a nine game limit, even if league playoff games are used, and the extra game is



**127CSR3**

limited to two teams. Leagues choosing to have the extra playoff game may participate in a two quarter Grid-O-Rama in place of a scrimmage game, if agreed to before the start of the season.

23.9.e. The total number of quarters for a middle school student in one season is 40, exclusive of the playoff game in §127-3-23.4.

23.9.f. A middle school football team is allowed one preseason scrimmage under the following conditions:

23.9.f.1. Scrimmage will not be played under game conditions.

23.9.f.2. Scrimmage must be played prior to first game of regular season.

23.9.f.3. Admission may be charged.

23.9.f.4. Registered officials may be used.

23.9.g. Middle school football teams may play overtime periods in regular season games. In season ending championship games, a tie breaking procedure shall be established and used if at the end of two overtime periods, the score remains tied. A maximum of two overtime periods are permitted in accordance with the NFHS Football Rules "20 yard line overtime procedure."

23.9.h. Middle school game ball: The football used involving only students in the 8<sup>th</sup> grade and below shall be the youth football. Modification of the rule is listed in the NFHS Rule Book, Rule 1-3-1.

23.9.i. Length of Quarters: For teams composed of students in any combination of 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> grades, the length of quarters shall be eight minutes.

23.9.j. A 9<sup>th</sup> grade team in a high school program will follow the rules provided for high school.

**§127-3-24. Golf (Boys and Girls).**

24.1. Rules: Golf rules published by the United States Golf Association are the official rules for all interscholastic competition unless otherwise provided by WVSSAC modifications.

24.2. Organized Team Practice: Organized team practice will begin on Monday of Week 5 and the first contest may be played on any day after the first day of the season.

24.3. Length of Season: The golf season will end for each team or individual at tournament elimination.

24.4. Maximum Team Contests: A high school golf team will be permitted to play no more than 18 varsity matches, 18 JV matches, and 18 girls' JV matches. A male or female participant may play no more than a total of 18 matches exclusive of regional and state tournament contests between the varsity, JV, and girls' JV matches. Girls who participate on school teams who do not have a minimum of three female participants may participate as individuals in girls' JV matches as long as the total number of matches they play between varsity, JV, and girls' JV does not exceed 18. Each interscholastic contest counts as one, whether it is nine or 18 holes, and regardless of number of opponents.

24.5. Scrimmages: Not permitted.

**127CSR3**

24.6. A student may accept awards in WVSSAC sanctioned events and non-sanctioned events during the entire year. These awards must be consistent with the items specified in §127-3-5.

24.7. Middle School Golf: The above will apply for middle schools with the following adaptations:

24.7.a. Middle school teams are permitted to play no more than 14 matches.

24.7.b. There shall be one season for golf in middle school, either fall or spring; however, the season selected shall be no longer than ten weeks.

**§127-3-25. Soccer (Boys and Girls).**

25.1. Rules: Soccer rules published by the NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modifications.

25.2. Organized Team Practice: Organized team practice will begin on Monday of Week 5 and the first contest may be played on Friday of Week 7.

25.3. Length of Season: The soccer season will end for each team by WVSSAC tournament elimination.

25.4. Maximum Team Contests: A soccer team will be permitted to play no more than 20 matches exclusive of sectional, regional, and state tournaments.

25.4.a. The maximum number of halves for a student in one season will be 50, exclusive of sectional, regional, and state tournaments.

25.4.b. A student shall not be permitted to participate in more than three halves during any one day. Play in any part of a half counts as one half. In an overtime game, the overtime shall be considered an extension of the second half.

25.5. A high school soccer team is permitted to participate in a soccer-o-rama and one preseason scrimmage or two preseason scrimmages. (See Glossary.)

25.6. Individual students of a team must have practiced on 12 separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

25.7. A student may not play or practice on a non-school soccer team while a member of the school team.

25.8. A student may accept awards only in WVSSAC sanctioned events during the season of that sport. These awards must be consistent with the items specified in §127-3-5. Students may accept only this same type of award in non-sanctioned events outside the sport season.

25.9. Middle Schools: The above will apply for middle schools with the following adaptations:

25.9.a. Middle school teams may play 14 matches including tournaments sanctioned by the WVSSAC.



### **127CSR3**

25.9.b. Organized team practice will begin on Monday of Week 6 and the first contest may be played on Monday of Week 9.

25.9.c. Middle school season will be completed by Saturday of Week 17.

25.9.d. The maximum number of halves for a student in one season will be 28.

25.9.e. Middle school teams are permitted one scrimmage. (See Glossary.).

#### **§127-3-26. Softball.**

26.1. Rules: Softball rules published by the NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modifications.

26.2. Organized Team Practice: Organized team practice will begin on Monday of Week 35 and the first contest may be played on Wednesday of Week 37.

26.3. Length of Season: The softball season will end for each team by WVSSAC tournament elimination.

26.4. Maximum Team Contests: A softball team will be permitted to play no more than 32 contests exclusive of sectional, regional and state contests.

26.5. Scrimmages: Two softball scrimmages with another high school may be conducted. (See Glossary.).

26.6. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

26.7. Student Participation:

26.7.a. A student may not play or practice on a non-school softball team while a member of the school team.

26.7.b. A student shall not participate in more than 32 games in one season, exclusive of sectional, regional and state tournament contests. Serving as a "courtesy or pinch runner" is not considered "participation" in a game.

26.8. During the sport season, a student may accept awards only in WVSSAC sanctioned events. These awards must be compliant with §127-3-5. Outside the sport season students may accept only compliant awards in non-sanctioned events.

26.9. Middle Schools: The above will apply for middle schools with the following adaptations:

26.9.a. Middle school teams may play 18 games including tournaments sanctioned by the WVSSAC.

26.9.b. Middle school season will be completed by Saturday of Week 45.

26.9.c. Middle school teams are permitted one scrimmage. (See Glossary.)

**127CSR3****§127-3-27. Swimming (Boys and Girls).**

27.1. Rules: Swimming rules published by the NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modification.

27.2. Organized Team Practice: Organized team practice will begin on Monday of Week 17 and the first contest may be on Wednesday of Week 19.

27.3. Length of Season: The swimming season will end for each team or individual by WVSSAC tournament elimination.

27.4. Maximum Team Contests: A swimming team will be permitted 16 contests exclusive of sectional, regional, and state contests.

27.5. Scrimmages: Two swimming scrimmages with another high school may be conducted. (See Glossary.).

27.6. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

27.7. A student may accept awards in WVSSAC sanctioned events and non-sanctioned events during the entire year. These awards must be consistent with the items specified in §127-3-5.

27.8. The above will apply for middle schools with the following adaptations: (Revised 2018-19)

27.8.a. Middle school teams will be permitted 14 meets.

**27.8.b. There shall be one season for Middle school swimming, either winter or spring. However, the season selected shall be no longer than 12 weeks. (Revised 2021-22)**

27.8.c. Middle school season will be completed by Saturday of Week 31.

27.8.d. Middle school teams are permitted one scrimmage. (See Glossary.).

**§127-3-28. Tennis (Boys and Girls).**

28.1. Rules: Tennis rules published by the United States Tennis Association are the official rules for all interscholastic competition unless otherwise provided by Commission modification.

28.2. Organized Team Practice: Organized team practice will begin on Monday of Week 35 and the first contest may be played on Wednesday of Week 37.

28.3. Length of Season: The tennis season will end for each team or individual at tournament elimination.

28.4. Maximum Team Contests: A tennis team will be permitted 22 matches exclusive of sectional, regional, and state contests.

28.4.a. Dual, triangular and quadrangular matches count as one match. Matches in which five or more schools participate count as two matches.

**127CSR3**

28.5. Scrimmages: Two tennis scrimmages with another high school may be conducted. (See Glossary.)

28.6. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

28.7. A student may accept awards in WVSSAC sanctioned events or non-sanctioned events during the entire year. These awards must be consistent with the items specified in §127-3-5.

28.8. Middle Schools: The above will apply for middle schools with the following adaptations: (Revised 2018-19)

28.8.a. Middle school teams may play 16 matches including tournaments sanctioned by the WVSSAC.

28.8.b. Middle school teams are permitted one scrimmage. (See Glossary.)

28.8.c. There shall be one season for tennis in middle school, either fall or spring; however, the season selected shall be no longer than 12 weeks.

**§127-3-29. Track and Field (Boys and Girls).**

29.1. Rules: Track and Field rules published by the NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modification.

29.2. Organized Team Practice: Organized team practice will begin on Monday of Week 35 and the first contest may be on Wednesday of Week 37.

29.3. Length of Season: The track and field season will end for each team or individual by WVSSAC tournament elimination.

29.4. Maximum Team Contests: A track and field team will be permitted 16 meets exclusive of sectional, regional, and state contests.

29.5. Participation Limitations: Maximum of four events per participant per meet.

29.6. Scrimmages: Not permitted.

29.7. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

29.8. A student may accept awards in WVSSAC sanctioned events and non-sanctioned events during the entire year. These awards must be consistent with the items specified in §127-3-5.

29.9. Middle Schools — The above will apply for middle schools with the following adaptations: (Revised 2018-19)

29.9.a. Middle school teams will be permitted 14 meets and only two meets per week.

29.9.b. Middle school season will be completed by Thursday of Week 46.

**127CSR3**

29.9.c. Participation limitation: Middle school students, regardless of grade levels (6, 7, or 8), may compete in a maximum of four events, of which only three may be running events, including relays.

**§127-3-30. Volleyball (Girls).**

30.1. Rules: Volleyball rules published by NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modification.

30.2. Organized Team Practice: Organized team practice will begin on Monday of Week 6 and the first contest may be played on Wednesday of Week 8.

30.3. Length of Season: The volleyball season will end for each team by WVSSAC tournament elimination.

30.4. Maximum Team Contest: A volleyball team will be permitted no more than 22 playing dates exclusive of sectional, regional, and state contests.

30.4.a. Dual, triangular, and quadrangular matches count as one playing date. Matches in which five or more schools participate count as two playing dates.

30.5. In dual competition, a student may participate in a maximum of four games against the same opponent if a match is two of three games and six games if the varsity match is three of five games.

30.6. Scrimmages: Two volleyball scrimmages with another high school, or one scrimmage and one preview may be conducted. (See Glossary.)

30.7. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

30.8. A student may not play or practice on a non-school volleyball team while a member of the school team.

30.9. A student may accept awards only in WVSSAC sanctioned events during the season of that sport. These awards must be consistent with the items specified in §127-3-5. Students may accept only this same type of award in non-sanctioned events outside the sport season.

30.10. Middle Schools: The above will apply for middle schools with the following adaptations:

30.10.a. Middle school teams will be permitted **18** playing dates. (Revised 2021-22)

30.10.b. Organized team practice will begin on Monday of Week 7 and the first contest may be played on Wednesday of Week 9.

30.10.c. Middle school season will be completed by Saturday of Week 17.

30.10.d. Middle school teams are permitted one scrimmage or one preview. (See Glossary.)

**§127-3-31. Wrestling (Boys).**

**127CSR3**

31.1. Rules: Wrestling rules published by the NFHS are the official rules for all interscholastic competition unless otherwise provided by Commission modification.

31.2. Organized Team Practice: Organized team practice will begin on Monday of Week 20 and the first contest may be played on Wednesday of Week 22.

31.3. Length of Season: The wrestling season will end for each team or individual at tournament elimination.

31.4. Maximum Team Contest: A wrestling team will be permitted to have 18 weigh-ins exclusive of regional and state tournaments. (Revised 2018-19)

31.4.a. Triangular and quadrangular weigh-ins count as one weigh-in. Weigh-ins in which five or more schools participate count as two weigh-ins. A dual meet, in which only two teams compete, shall only count as one-half of a weigh-in point. (Revised 2020-21)

31.5. Scrimmages: Two wrestling scrimmages with another high school may be conducted. (See Glossary.)

31.6. Individual students of a team must have practiced on **12** separate days, exclusive of the day of a contest, before participating in an interscholastic contest. (Effective September 13, 2021)

31.7. A student may accept awards only in WVSSAC sanctioned events during the season of that sport. These awards must be consistent with the items specified in §127-3-5. Students may accept only this same type of award in non-sanctioned events outside the sport season.

31.8. Middle Schools: The above will apply for middle schools with the following adaptations:

31.8.a. Organized Team Practice: Organized team practice will begin on Monday of Week 19 and the first contest may be played on Wednesday of Week 22.

31.8.b. Middle school teams may have 16 weigh-ins excluding any conference tournament. (Revised 2016-17; 2018-19)

31.8.c. Middle school teams are permitted one scrimmage under the same conditions as a high school.

31.8.d. Middle school season will be completed by Saturday of Week 33.

**127CSR4**  
**TITLE 127**  
**LEGISLATIVE RULE**  
**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION**  
**SERIES 4**  
**PROVISIONS GOVERNING CONDUCT**

**§127-4-1. General.**

1.1. Scope. -- These rules govern conduct for active and spectator participants, coaches and all other school personnel at interscholastic athletic events.

1.2. Authority. -- W. Va. Constitution, Article XII, §2 and W. Va. Code §18-2-5.

1.3. Filing Date. -- July 11, 2019.

1.4. Effective Date. -- September 9, 2019.

1.5. Repeal of Former Rule. — This legislative rule amends W. Va. 127CSR4, West Virginia Secondary School Activities Commission Series 4, Provisions Governing Conduct, filed July 9, 2015, and effective September 8, 2015.

**§127-4-2. Sportsmanship.**

2.1. Member schools are required to conduct all relations with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of failure to abide by this rule are those which are noted below and others of similar nature which violate the accepted code of good sportsmanship.

2.2. It shall be the responsibility of the home schools to take proper steps and precautions to insure that crowd and spectator control is handled reasonably at all interscholastic athletic contests including all post season athletic contests whether home or away. In addition to the spectators, attention must be directed to the safety, comfort, and security of the coaches, officials, and students. Their seating accommodations should protect them from spectator interference.

2.3. It shall be the responsibility of any team, student, coach, or attendant to remain in or a part of a contest until its normal end as provided by the National Federation Rules of that particular sport. The exception to the above would be provided by the same National Federation Rules of that particular sport. The penalty for a violation by a coach, student, or team attendant will not only involve ejection during that particular contest but shall also involve that student, coach, or team attendant not being a part of that school's team for the next regularly scheduled contest(s) or post season progression in a playoff tournament, as regulated in §127-4-3.7.3. The coach, student, or team attendant may practice in the days prior to the contest but may not dress or participate on the day of the contest. Rule 127-3-8 further explains the forfeiture consequences. (Revised 2011-12)

2.4. It shall be the responsibility of a member school to use every means at its disposal to impress upon its faculty, student body, team members, coaching staff, and officials the values of sportsmanship in preparation for the conduct and management of interscholastic contests.



**127CSR4**

2.5. It shall be the responsibility of an administrator, spectator, student, or coach to follow those directions provided for in the Code for Interscholastic Athletics.

**§127-4-3. Code for Interscholastic Athletics.****3.1. The school administrator shall:**

3.1.a. Encourage and promote friendly relationships and good sportsmanship throughout the school by requiring courtesy and proper decorum at all times, by acquainting students and others in the community with ideals of good sportsmanship and by so publicizing these concepts and attitudes that all members of the school and community will understand their meaning.

3.1.b. Insist upon implicit compliance with all rules and regulations of the West Virginia Secondary School Activities Commission, hereinafter referred to in this rule as the WVSSAC.

3.1.c. Secure WV registered officials for all contests.

3.1.d. Insist upon adequate safety provisions for all activities, for both participants and spectators.

3.1.e. Approve only those activities and schedules which are educationally and physically sound for the student.

3.1.f. Encourage all to judge the success of the athletic program on the basis of the education goals and the attitude of the participants and spectators, rather than on the basis of the number of games won or lost.

3.1.g. Insist that the students exemplify the highest standards of good sportsmanship as a means of inculcating desirable spectator attitudes.

3.1.h. Provide adequate hygienic, sanitary, and attractive facilities for the dressing and housing of visiting teams and officials.

3.1.i. Review with staff the Sportsmanship Rule.

**3.2. The coach shall:**

3.2.a. Demonstrate high ideals, good habits, and desirable attitudes in personal behavior and demand the same standards of the students.

3.2.b. Recognize that the purpose of competition is to promote the physical, mental, social, and emotional well-being of the students and that the most important values of competition are derived from playing the game fairly.

3.2.c. Be a modest winner and a gracious loser.

3.2.d. Maintain self-control at all times, accepting adverse decisions without public display of emotion or of dissatisfaction with the officials.

**127CSR4**

3.2.e. Cooperate with the school principal in the planning, scheduling and conduct of sports activities.

3.2.f. Employ accepted educational methods in coaching, giving all students an opportunity to use and develop initiative, leadership, and judgment.

3.2.g. Pay close attention to the physical condition and well-being of the students refusing to jeopardize the health of an individual for the sake of improving the team's chances to win.

3.2.h. Teach students that it is better to lose fairly than win unfairly.

3.2.i. Prohibit gambling, profanity, abusive language, and similar violations of good sportsmanship.

3.2.j. Refuse to disparage an opponent, an official, or others associated with athletic activities and discourage gossip and questionable rumors concerning them.

3.2.k. Properly supervise students under their immediate care and specifically observe a coach's responsibilities in conjunction with state interscholastic contests.

3.3. The spectator shall:

3.3.a. Realize that they represent the school just as definitely as does the member of a team, and, therefore, has an obligation to be a true sportsman, encouraging through this behavior the practice of good sportsmanship by others.

3.3.b. Recognize that good sportsmanship is more important than victory by approving and applauding good team play, individual skill and outstanding examples of sportsmanship and fair play exhibited by either team.

3.3.c. Recognize that, since the primary purpose of interscholastic athletics is to promote the physical, mental, moral, social, and emotional well-being of the students through the medium of contests, victory or defeat is in reality of secondary importance.

3.3.d. Treat visiting teams and officials as guests, extending to them every courtesy.

3.3.e. Be modest in victory and gracious in defeat.

3.3.f. Respect the judgment and integrity of officials, realizing that their decisions are based upon game conditions as they observe them.

3.4. The student shall:

3.4.a. Be courteous to visiting teams and officials.

3.4.b. Participate to the limit of their ability. The true student does not give up, nor do they quarrel, cheat, bet, or grandstand.

3.4.c. Be modest when successful and be gracious in defeat. A true "sport" does not offer excuses for failures.



**127CSR4**

3.4.d. Maintain a high degree of physical fitness by observing team and training rules conscientiously.

3.4.e. Demonstrate loyalty to the school by maintaining satisfactory scholastic standing and by participating in and supporting other school activities.

3.4.f. Understand and observe the rules of the game and the standards of eligibility.

3.4.g. Respect the integrity and judgment of officials and accept their decisions without questions.

3.4.h. Respect the facilities of host schools and the trust entailed in being a guest.

3.4.i. The cheerleader shall always cheer positively for the team and never negatively against the opponent.

3.5. The official shall:

3.5.a. Place the welfare of the student above all other considerations.

3.5.b. Know the game rules thoroughly and give intelligent interpretations.

3.5.c. Maintain confidence and control from start to finish.

3.5.d. Work cooperatively with fellow officials and game administrators.

3.5.e. Refrain from exhibiting emotions or arguing with a student or coach. Maintain self-control under all conditions.

3.5.f. Be fair, impartial and professional.

3.5.g. Be neat and dress in the appropriate uniform.

3.5.h. Be in adequate physical condition for the demands of the particular sport.

3.5.i. Refrain from commenting upon or discussing a team, play, game situation, or fellow official.

3.5.j. So conduct the game as to enlist the cooperation of students, coaches, and spectators in the interest of good sportsmanship.

3.6. *Protection, Facilities, and Assistance.* The home team is expected to furnish supervision. Outdoor facilities or playing facilities should be separated from the spectators by a restraining barrier (fence, wire, rope, etc.). Officials should be provided with a parking space, private dressing facilities not accessible to unauthorized personnel, and should be paid no later than half-time of game. The use of trained, competent, adult "assistant officials," i.e., scorers, timers, chain and down marker crews, etc., is strongly recommended.

3.7. *Statement of Policy.* Insofar as unsportsmanlike actions by students, school administrators, officials, coaches, faculty members, and spectators are concerned, the identical items under the Sportsmanship Rule along with the following guides will be referred to by the WVSSAC:

**127CSR4**

3.7.a. The school whose coach behaves in a manner likely to have adverse influence on the attitudes of students or spectators may be provided with the choice of taking disciplinary action against that coach or having the entire school disciplined by the WVSSAC.

3.7.b. Any student who in protest lays hands or attempts to lay hands upon an official may be declared ineligible by the principal or by the WVSSAC for up to one year. Any student who strikes an opponent, coach, or a spectator during or following an athletic event may be declared ineligible by the principal or the WVSSAC for a specified period of time up to one year, depending on the seriousness of the act.

3.7.c. Any coach, student, or bench personnel ejected by an official will be suspended for the remainder of the game, match, meet or contest. The coach, student, or bench personnel ejected by an official will also be suspended in additional contest(s); the suspension will be assessed based upon ten (10) percent of the allowed regular season contests or post season progression in a playoff tournament for each sport. Any tenth of a percentage from .1 to .4 will be a suspension equal to the whole number of the percent. Any tenth from .5 to .9 will be an additional contest added to the whole number. The suspension will include the number of indicated contests in that sport and at that level and all other sport contests in the interim at any level. A second ejection will result in the doubling of the suspension assessed for the first ejection. If an individual is ejected for a third time during the same sport season, the individual will be suspended from participating or coaching for 365 calendar days from the date of ejection. In accordance with Rule 127315.3, an individual ejected by an official may not appeal that ejection, or any subsequent suspension that is a consequence of the ejection by an official. (Revised 2012-13; 2015-16)

3.7.c.1. Any coach, player or bench personnel who has been ejected shall not be permitted to attend any contest(s) during said suspension. He/she shall not be affiliated with the team in any capacity. This would include but not be limited to transportation to or from the contest, meeting with the team before, during or after said contest. He/she is not permitted to be in sight or sound of said contest venue. Regular practice or team meetings not affiliated with a contest are permitted. (Revised 2007-08)

3.7.c.2. If suspensions are imposed to a student or bench personnel at the end of the sport season and no contest remains, the suspension is carried over to that particular sport until the next school year. In the case of a senior student, the penalty will continue to the next WVSSAC sponsored sport.

3.7.c.3. Any coach suspension that cannot be enforced during the sport season in which the ejection occurs will be enforced at the beginning of the next season of that same sport.

3.7.d. In case of spectators physically molesting an official, administrator, coach, or student, the school may be given one of two options: 1) file charges against the offender (s) or 2) accept discipline from the WVSSAC. Any person found guilty of W. Va. Code §61-2-15(a) Assault, Battery on Athletic Officials, while these individuals are working or as a result of working an athletic contest, shall be banned from all WVSSAC athletic events for a minimum of 365 days from the date of being found guilty. The school filing charges shall notify the WVSSAC of the incident and outcome of any legal action.

3.7.e. The school that does not lend complete cooperation in the host school's effort to promote the spirit of good sportsmanship may be disciplined by the WVSSAC.

3.7.f. A coach may be considered as committing unsportsmanlike conduct if they make degrading remarks about officials during or after a game either on the field of play, from the bench, or through any public news media, argues with officials, or goes through motions indicating dislike for a decision, protests

#### 127CSR4

the decision and actions of officials pertaining to the game during and after the contest, or detains the official on the field of play following a game to request a ruling or explanation of some phase of the game. If a coach feels he/she has a legitimate criticism of a penalty call or a request for a rule interpretation, such criticism or request should be made in the privacy of the coach's office or the official's quarters and should be made in a courteous manner.

3.7.g. A student or team attendant shall not leave the bench area, team box area, or their designated off-field area during a game or contest other than during that time permitted by game or contest rules. A coach shall not leave the bench area, team box area, or the designated off-field area during a game or contest other than during that time permitted by game or contest rules unless a student altercation is taking place and the official requests assistance. Violation of this rule shall cause the coach, student, or team attendant to be immediately ejected from the contest; team penalized according to game or contest rules; and that coach, student, or team attendant will not be eligible to participate in the next contest as outlined in §127-4-2.3. (Revised 2019-20)

3.8. Procedure. Unsportsmanship action must be reported in detail to the WVSSAC. A copy of the complaint must also be filed with the principal of the school involved. Each principal involved shall report such information or answers to the report as they deem appropriate. Upon receipt of all reports, the Executive Director and/or the Board of Directors of the WVSSAC shall investigate and adjudicate such reports in accordance with the powers afforded in §127-1-8.6 and 8.7 and §127-1-12.2 and 12.3 of the Constitution. Penalties up to and including suspension of member schools may be made in accordance with §127-4.

3.9. The following defines the different types of disciplinary action which may be assessed for violation of any WVSSAC rule by a member school, administrator, coach, athlete or contest official: (Revised 2007-08)

3.9.a. *Warning.* A warning may be given by the Executive Director or Assistant Executive Director. It is official notice that an inexcusable, unethical, or unsportsmanship action has occurred, is a matter of record, and that such an occurrence must not be repeated.

3.9.b. *Probation.* Probation is a much more severe type of warning and may be expressed two ways: 1) a school, coach, student, or team attendant on probation is told that further violations will lead to a fine or suspension; and/or 2) a school on probation is on conditional WVSSAC membership but may engage in its regular schedule, sanctioned events, and all WVSSAC tournament play, providing a program is filed with the Executive Director of the WVSSAC indicating measures to be taken to alleviate this problem which caused the school to be placed on probation.

3.9.c. *Suspension.* A school/coach suspended from the WVSSAC may not meet in interscholastic competition of any kind with a WVSSAC member school or a school that is a member of another state associated with the National Federation of State High School Associations.

3.9.d. *Fine.* A fine may be levied by the Executive Director.

3.9.e. Each of these sanctions (Warning, Probation, Suspension and Fine) may be imposed or levied separately, or in a combination of one or more sanctions.

3.10. *Appeals.* All cases involving disciplinary action against member schools, coaches, students, team attendants, or officials may be protested in accordance with §127-6. However, disciplinary action imposed by an official, including disciplinary action that is a consequence of a decision by an official, such as a suspension for an additional game or games as a consequence of an ejection, is governed by Rule 127-3-15.3 and is not subject to appeal.

**127CSR4**

3.11. *Review of Ejections.* Disciplinary action imposed by a contest official, including disciplinary action that results in a suspension for an additional game or games as a consequence of an ejection, is not subject to appeal pursuant to Rule §127-6. However, if the individual ejected believes the ejection was improper, he/she may request a review of the ejection by his/her principal. If the principal believes there is merit in the requested review, the principal shall complete and submit the WVSSAC Ejection Review Form within 24 hours or the next business day of the ejection to the Executive Director of the WVSSAC. If a review is properly requested, the WVSSAC will review the officials' special report, the WVSSAC Ejection Review Form, and such other information as the WVSSAC deems appropriate. Upon review, the WVSSAC Executive Director or the designated Assistant Director will either sustain the ejection and any consequent suspension(s), or will determine the ejection was improper and void any consequent suspension(s). A decision by the WVSSAC upon reviewing an ejection is not subject to appeal pursuant to Rule §127-6.

**127CSR5**

**TITLE 127  
LEGISLATIVE RULE  
WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION**

**SERIES 5  
BAND ACTIVITIES**

**§127-5-1. General.**

1.1. Scope. — These rules and regulations govern band activities.

1.2. Authority. — W. Va. Constitution, Article XII, §2, and W. Va. Code §§18-2-5, 18-2-25, 18-2-25a, and 18225b.

1.3. Filing Date. — August 10, 2018.

1.4. Effective Date. — October 9, 2018.

1.5. Repeal of Former Rule. — This legislative rule amends W. Va. 127CSR5, West Virginia Secondary School Activities Commission Series 5, Band Activities, filed June 7, 2002, and effective August 5, 2002.

**§127-5-2. Enrollment and Membership - Band.**

2.1. All members of a member school band must be enrolled in that school; §127-5-2.3 is the only exception.

2.2. Majorettes, flag corps, drill teams, etc. are considered an integral part of the band and shall be adjudicated and governed accordingly. Any performance by a majorette, member of a flag corps or drill team, without the band, shall not be considered a band activity.

2.3. Instrumental music students in 7<sup>th</sup> and 8<sup>th</sup> grades of a feeder school which does not have its own band and who receive their instruction from the band director of the senior high band in which the students will eventually enroll shall be eligible to participate in the band directed by their instructor. (Revised 2018-19)

2.4. Participants in secondary school interscholastic band activities shall be eligible only for the number of years in which they are enrolled and attending a secondary school.

2.5. Students enrolled in schools serving grades five through eight may be eligible to participate in all band activities.

**§127-5-3. Scholarship - Band.**

3.1. All students are required to be enrolled in the equivalent of at least four content area course credits toward graduation. Failure to earn passing marks in the equivalent of at least four content area courses toward graduation shall render a student ineligible for the following semester.

3.1.a. Two of those four content area course credits must be in English-language arts, social studies, mathematics or science, and may or may not be in the same subject.

**127CSR5**

3.1.b. If a student has completed all state, county, and school requirements, they may select four full credits from any area of the curriculum offered by the school.

3.1.c. If a student is taking a multiple period block course, such as vocational courses for a full morning or afternoon, it may be counted as more than one course. The number of courses counted will be equal to the units of full credits given; however, §127-5-1.1 and §127-5-1.2 apply.

3.2. Full credit may be awarded for outside courses and experimental programs developed by the school itself provided that it meets standards established by the county and West Virginia Board of Education. Such credit must be earned during the regular school term.

3.3. In order for a withdrawn student or expelled student to regain eligibility, they must complete one semester of school work.

3.4. Scholastic deficiencies cannot be made up after the last day of the semester, except when a student's final examination(s) and course credit are delayed due to illness verified by a physician.

3.5. In all cases, the official school transcript determines a student's eligibility and is regarded as final.

3.6. A student promoted to the 7<sup>th</sup> grade for the first time is considered to have satisfied scholastic requirements and is permitted to participate during the first semester of initial enrollment in that grade, provided the student is otherwise eligible.

**§127-5-4. Festivals - Band.**

4.1. The West Virginia Secondary School Activities Commission (WVSSAC/Commission) Board of Directors (Board of Directors) shall divide the state into regions for the purpose of band festivals and shall have the authority to place bands in those regions. They shall also determine the time, place, and management of these events.

4.2. All bands participating in those festivals shall be composed of students that meet the qualification standards set forth in these rules.

4.3. The Board of Directors shall appoint directors for the festivals. One of their responsibilities will be to contract adjudicators for the festivals.

4.4. Newly established programs are not required to participate in the regional festival.

**§127-5-5. Sanctioning - Band.**

5.1. On or before September 1 of each school year, the Board of Directors shall provide each member school a list of approved school sponsored and non-school sponsored contests and activities in which member bands may participate during the ensuing year.

5.2. Additions to this list may be made after September 1 of each school year, provided that the request for approval is filed with the Commission office at least 30 days prior to the activity.

5.3. In order to qualify for approved participation in activities outside the home county and counties contiguous to the home county (including out-of-state), bands of member schools must have participated



**127CSR5**

within the guidelines of the WVSSAC Band Festival Plan in the most recently conducted regional band festival.

5.4. A school band shall not be absent from school more than five school days each year for the purpose of participating in band activities.

5.5. The regulations above apply only during the regular school term.

**§127-5-6. Awards - Band.**

6.1. Only a member school or a non-school organization sponsoring an activity approved by this Commission may give the following awards to a student or band: medal, trophy, cup, certificate, ribbon, plaque, unattached letter, unattached chevron, or similar award.

6.2. A student may accept as an individual or member of a school band the above specified awards in the following situations:

6.2.a. from a member school for participation;

6.2.b. in a sanctioned event; or

6.2. c. in a non-sanctioned event during the summer.

6.3. A student may not receive the following awards from any source:

6.3.a. Wearing apparel - sweaters, jackets, etc.;

6.3.b. Equipment - radio, television, etc.;

6.3.c. Music instruments, batons, etc.; and

6.3.d. Money (scholarship to institutions of higher learning are exempted).

6.4. Member school bands may accept prizes and/or gratuities for participation in sanctioned events during the school term and in non-sanctioned events during the summer.

6.5. Purchase for a student of an item mentioned in §127-5-6.3.1-4 whereby a portion is donated by a school, booster club, auxiliary agency, or any other group or organization is prohibited.

6.6. Nothing in §127-5-6 shall be interpreted to affect the recognition of scholarship or scholastic achievement.

6.7. Any student who accepts an award in any band activity, other than those approved in these rules, shall be ineligible to participate in any band activity for 365 days.

**§127-5-7. Classification of Schools - Band.**

7.1. There shall be three classes of schools for bands: Class AAA, Class AA, and Class A. The Board of Directors is authorized to determine the size of enrollment in each class.

**127CSR5**

7.2. Classification shall be determined every four years in the even numbered year and, when established, shall remain in effect for four school years. Classification shall be based on the second month's enrollment of the previous odd numbered year.

7.3. Enrollment standard for schools will be the active enrollment of the total number of students in grades 9, 10, 11, and 12.

7.4. Member middle schools will not be given a classification. (Revised 2018-19)



**127CSR6****TITLE 127  
LEGISLATIVE RULE****WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION****SERIES 6  
VIOLATIONS OF THE RULES****§127-6-1. General.**

- 1.1. Scope - These rules govern the procedures for protests, contested cases and waiver of rules.
- 1.2. Authority - W.Va. Constitution, Article XII, §2 and W.Va. Code §18-2-25.
- 1.3. Filing Date - July 13, 2007.
- 1.4. Effective Date - September 11, 2007.

1.5 Repeal of Former Rule. This legislative rule amends W. Va. 127CSR6, West Virginia Secondary School Activities Commission Series 6, Violation of the Rules, filed June 7, 2002 and effective August 6, 2002.

**§127-6-2. Powers of the Board of Directors to Impose Penalties.**

2.1. All violations of rules and questions of dispute are within the power of the Board of Directors to investigate, through the Executive Director, or other authorized person or persons, and to impose such penalties as are prescribed elsewhere in this Constitution and Bylaws and as listed below.

2.2. If the Board of Directors finds a school guilty of violating the provisions of this Constitution and Bylaws, said Board of Directors has the power to:

2.2.1. Declare the school ineligible for championship honors or other activities for the current year in the activity in which the offense occurred.

2.2.2. Place the school on probation for a period of time not to exceed 365 days from date of such finding. Such probation may include the loss of voting rights for the member and/or the loss of the privilege of the member school to participate in any or all interscholastic events which are sanctioned, controlled or sponsored by this Commission, and/or the imposition of other restrictive measures as the Board of Directors may deem advisable.

2.2.3. Assess such fines as are deemed necessary and just.

2.2.4. Impose such other additional penalties as may seem justifiable in the particular case considered.

**§127-6-3. Method for Protests - Deputies.**

3.1. If charges against any member of the Commission cannot be satisfactorily resolved by the Deputy Board Member in the region in which such charges originate, then the charges shall be submitted in writing to the Executive Director of the West Virginia Secondary School Activities Commission (WVSSAC).

3.2. If the Executive Director is unable to resolve the charges in a manner satisfactory to the schools concerned, he shall submit the protest to the Board of Directors and the decision of said Board shall be final except as provided in Section 127-1-13.3.1 of the Constitution.

## 127CSR6

3.3. In no case shall a protest be heard by said Board unless the principal bringing the charges notifies in writing the principal of the school being protested. A copy of such notification shall accompany the protest sent to the Executive Director.

3.4. The principal of a school against which charges have been preferred shall be permitted to appear before the Board of Directors.

### **§127-6-4. Method of Protests - Executive Director.**

4.1. If the Executive Director has reason to believe that any member of the WVSSAC has or is violating the rules of the Commission he shall make such investigation as he deems necessary to determine the innocence or guilt of the suspected member.

4.2. The Executive Director shall then report his findings to the principal of the offending school and set a time and place for a meeting with the principal of the school, at which meeting the principal shall be permitted to submit any pertinent evidence in defense of his school.

4.3. If the principal is not then satisfied with the decision of the Executive Director, a request may be made for a hearing before the Board of Directors at such time and place as is convenient for both the principal and the Board.

4.4. In no case shall the Board of Directors hear charges and render a decision unless the principal is given an opportunity to appear in defense of his school. After all evidence has been submitted, the Board of Directors shall render a decision which shall be final except as provided in §127-1-13.3 of the Constitution.

### **§127-6-5. Method of Protests - Contested Cases.**

5.1. Commencement of an appeal in a contested case by an aggrieved party, hereinafter named the petitioner, shall be instituted by the filing of a verified petition which shall contain:

5.1.1. The name and address of the petitioner.

5.1.2. The interest of the petitioner.

5.1.3. A statement of facts.

5.1.4. A statement of jurisdiction.

5.1.5. A designation of the applicable rule or rules involved.

5.1.6. An assignment of errors relied upon.

5.1.7. A statement of the relief requested.

5.2. Petitions for appeal shall be served upon the WVSSAC by registered or certified mail.

5.3. The Executive Director, or any other interested party, may file an answer, but failure to file an answer will be interpreted as a denial of the allegations contained in the petition. If they elect to file an answer, it shall contain the following:

**127CSR6**

5.3.1. Allegation of facts with denials, additional facts or other pertinent data.

5.3.2. A statement of other applicable rules and statutes.

5.3.3. A statement of objections, if any, to the parties or other portion of the petition.

5.3.4. Designation of other interested parties.

5.4. All answers shall be filed with the Board of Directors within five (5) days after receipt of the petition for appeal.

5.5. In the event that the parties are unable to dispose of the issues without a hearing or if the Board of Directors elects to proceed without a pre-hearing conference, the Executive Director shall notify all parties in writing of the date, time and place set for a hearing on the appeal. The notice shall be given at least seven (7) days in advance of the time set for the hearing and shall contain a short and plain statement of the issues involved. Said hearing shall be conducted in conjunction with a regularly scheduled meeting of the Board of Directors. In this event, costs for such a meeting shall not be taxed against the petitioner(s).

5.6. The matter may be heard at a special meeting of the Board of Directors provided the petitioner(s) agrees in writing to pay all costs incidental to such meeting. Such costs shall not exceed the actual expenses incurred. The Board of Directors, at its discretion, may require the petitioner(s) to post adequate security for such costs with the Executive Director.

5.7. If the petitioner(s)' appeal should prevail at the special meeting of the Board of Directors or at a subsequent hearing before the Review Board, the security deposit or the posted costs shall be returned to the petitioner(s).

5.8. All parties to any appeal may represent themselves or be represented by an attorney licensed to practice law in the State of West Virginia.

5.9. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Objections to evidentiary offers shall be noted in the record. Any party to any such hearings may vouch the record as to any excluded testimony or other evidence.

5.10. All evidence, including papers, records, Commission staff memoranda, and documents, in the possession of the Commission, of which it desires to avail itself, shall be offered and made a part of the record in the case. Documentary evidence may be received in the form of copies of excerpts or by incorporation by reference.

5.11. Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

5.12. All of the testimony and evidence of any such hearing shall be reported by stenographic notes and characters or by mechanical means. All rulings on the admissibility of testimony and evidence shall also be reported. The Board of Directors shall prepare an official record, which shall include reported testimony and exhibits in each contested case, and all Commission staff memoranda and data used in consideration of the case, but it shall not be necessary to transcribe the reported testimony unless required for purpose of rehearing or review. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default.

**127CSR6****§127-6-6. Review Board.**

6.1. Any decision of the Board of Directors involving penalty, protest or interpretation of the rules and regulations of this Commission may be appealed to the Review Board in the manner hereinafter described. Said appeal may be made by any member of the aggrieved party which is directly affected by the decision of the Board of Directors and aggrieved by such decision of the Board of Directors.

6.2. Appeals must be filed with the State Superintendent of Schools of West Virginia within fifteen days after any final decision of the Board of Directors of the WVSSAC.

6.3. Upon receipt of said appeal, the State Superintendent of Schools shall immediately notify each member of the Review Board of said appeal and the Chairman of said Review Board who shall forthwith set a date, time and place for hearing and shall immediately notify all interested parties, in writing, of the same.

6.4. The filing of any appeal shall not stay enforcement nor act to supersede the prior ruling or decision of the Board of Directors. However, pending the hearing on any appeal, at its discretion, the Board of Directors may grant a stay of enforcement upon such terms as it deems proper.

6.5. Proceedings for review shall be instituted by filing a petition, in quintuplicate, with the State Superintendent of Schools within fifteen days after the date upon which such party received notice of the final order or decision of the Board of Directors. A copy of the petition shall be served upon the WVSSAC or its Executive Director and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to effect any such appeal.

6.6. Within fifteen days after receipt of a copy of the petition by the WVSSAC or its Executive Director, or within such further time as the Review Board may allow, said Commission or said Executive Director shall transmit to such Review Board, the original or a certified copy of the entire record of the proceedings under review, including a transcript of all testimony and all papers, motions, documents, evidence and records as were before the said Commission, all Commission staff memoranda submitted in connection with the case, and a statement of matters officially noted; but, by stipulation of all parties to the review proceedings, the record may be shortened. The expense of preparing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs involved. Upon demand by any party to the appeal, said Commission shall furnish, at the cost of the party requesting same, a copy of such record. In the event the complete record is not filed with the Review Board within the time provided for in this section, the appellant may apply to the Review Board to have the case docketed, and the Review Board shall order such record filed. Failure of the said Commission to file the record within the time stipulated shall automatically stay the enforcement of the order or decision of the Board of Directors, in that particular case, and such stay shall continue until such record is filed.

6.7. Appeals taken on questions of law, fact or both, shall be heard upon assignment of error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the Review Board may consider and decide errors which are not assigned or argued.

6.8. The review shall be conducted by the Review Board without a jury and shall be upon the records made before the Commission, except that in cases of alleged irregularities in procedure before the Commission not shown in the record, testimony thereon may be taken before the Review Board. The Review Board may hear oral arguments and require written briefs.

**127CSR6**

6.9. After hearing all evidence and arguments, the Review Board shall render a decision in one of three forms: (1) sustaining the ruling of the Board of Directors; (2) reversing the ruling of the Board of Directors; or (3) remanding the matter to the Board of Directors for further action. The Board of Review shall reverse, vacate or modify the order or decision of the Board of Directors if the substantial rights of the petitioner or petitioners have been prejudiced because of the administrative findings, inferences, conclusions, decisions or order are (1) in violation of constitutional or statutory provisions; or (2) in excess of the statutory authority or jurisdiction of the Commission; or (3) made upon unlawful procedures; or (4) affected by other error of law; or (5) clearly wrong in view of the reliable probative and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

6.10. Four members, present and voting, shall constitute a quorum for the Review Board to transact all business.

6.11. A majority vote of those members of the Review Board in attendance at any hearing shall be required to render a decision. Such decision shall be final and binding on all parties concerned.

6.12. Within thirty (30) days from the date of any hearing, the Review Board shall make a written report of its decision, stating briefly therein its reasons for such a decision. Copies of the report shall be mailed to the State Superintendent of Schools, the Executive Director of the WVSSAC and, upon written request, to other interested parties.

6.13. Nothing in this Article shall be construed to limit the Board of Directors in performing its regular duties as provided in the Constitution and Bylaws of the WVSSAC; in making investigations and initiating proceedings against any member of said Commission; in making interpretations of the rules of eligibility of student athletes, cheerleaders or band members; or in imposing penalties for the violations of any rules, regulations, or Bylaws of said Commission.

6.14. The Constitution §127-1-8.5 and Rules §127-6-2, §127-6-3.2 and §127-6-4.4 which infer or state that decisions of the Board of Directors are final, are hereby modified only to the extent that such final ruling of the Board of Directors may be appealed within the time limit in the manner prescribed elsewhere in this Article and affirmed, reversed or remanded by the Board of Review.



# HIGH SCHOOL WVSSAC STANDARDIZED CALENDAR 2021-2027

	Date and-or Week No.	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027
<b>BAND</b>							
State Contest	Mon. of Wk. 38 to Sat. of Wk. 43	Mar. 21 Apr. 30	Mar. 20 Apr. 29	Mar. 18 Apr. 27	Mar. 24 May 3	Mar. 23 May 2	Mar. 22 May 1
<b>BASEBALL</b>							
Season Starts	Mon. of Wk. 35	Feb. 28	Feb. 27	Feb. 26	Mar. 3	Mar. 2	Mar. 1
1st Contest May Be Held	Wed. of Wk. 37 (45-46) Mon-Sat	Mar. 16 May 9-21	Mar. 15 May 8-20	Mar. 13 May 6-18	Mar. 19 May 12-24	Mar. 18 May 11-23	Mar. 17 May 10-22
Sectional	(47) Mon-Sat	May 23-28	May 22-27	May 20-25	May 26-31	May 25-30	May 24-29
Regional	(48) Thurs-Sat	June 2-4	June 1-3	May 30-June 1	June 5-7	June 4-8	June 3-5
State							
<b>BASKETBALL BOYS'</b>							
Season Starts	Mon. of Wk. 20	Nov. 15	Nov. 14	Nov. 13	Nov. 18	Nov. 17	Nov. 16
1st Contest May Be Held	Tues. of Wk. 23 (34-35) Fri-Sat	Dec. 7 Feb. 25-Mar. 5	Dec. 6 Feb. 24-Mar. 4	Dec. 5 Feb. 23-Mar. 2	Dec. 10 Feb. 28-Mar. 8	Dec. 9 Feb. 27-Mar. 7	Dec. 8 Feb. 26-Mar. 6
Sectional	(36) Tues-Thurs	Mar. 8-10	Mar. 7-9	Mar. 5-7	Mar. 11-13	Mar. 10-12	Mar. 9-11
Regional	(37) Wed-Sat	Mar. 16-19	Mar. 15-18	Mar. 13-16	Mar. 19-22	Mar. 18-21	Mar. 17-20
State							
<b>BASKETBALL GIRLS'</b>							
Season Starts	Mon. of Wk. 19	Nov. 8	Nov. 7	Nov. 6	Nov. 11	Nov. 10	Nov. 9
1st Contest May Be Held	Tues. of Wk. 22 (33-34) Fri-Sat	Nov. 30 Feb. 18-26	Nov. 29 Feb. 17-25	Nov. 28 Feb. 16-24	Dec. 3 Feb. 21-Mar. 1	Dec. 2 Feb. 20-28	Dec. 1 Feb. 19-27
Sectional	(35) Tues-Thurs	Mar. 1-3	Feb. 28-Mar. 2	Feb. 27-29	Mar. 4-6	Mar. 3-5	Mar. 2-4
Regional	(36) Wed-Sat	Mar. 9-12	Mar. 8-11	Mar. 6-9	Mar. 12-15	Mar. 11-14	Mar. 10-13
State							
<b>CHEERLEADING</b>							
Season Starts	Mon. of Wk. 5	Aug. 2	Aug. 1	July 31	Aug. 5	Aug. 4	Aug. 3
Regional	(18) Sat	Nov. 6	Nov. 5	Nov. 4	Nov. 9	Nov. 8	Nov. 7
State Contest	(23) Sat	Dec. 11	Dec. 10	Dec. 9	Dec. 14	Dec. 13	Dec. 12
Season Ends		Mar. 19	Mar. 18	Mar. 16	Mar. 22	Mar. 21	Mar. 20
<b>CROSS COUNTRY</b>							
Season Starts	Mon. of Wk. 5	Aug. 2	Aug. 1	July 31	Aug. 5	Aug. 4	Aug. 3
1st Contest May Be Held	Sat. of Wk. 7	Aug. 21	Aug. 20	Aug. 19	Aug. 24	Aug. 23	Aug. 22
Regional	(16) Thurs-Sat	Oct. 21-23	Oct. 20-22	Oct. 19-21	Oct. 24-26	Oct. 23-25	Oct. 22-24
State	(17) Sat	Oct. 30	Oct. 29	Oct. 28	Nov. 2	Nov. 1	Oct. 31
<b>FOOTBALL</b>							
Season Starts	Mon. of Wk. 5	Aug. 2	Aug. 1	July 31	Aug. 5	Aug. 4	Aug. 3
1st Contest May Be Held	Wk. 8	Aug. 23	Aug. 22	Aug. 21	Aug. 26	Aug. 25	Aug. 24
Play-Off 1st Round	(19) Fri-Sat	Nov. 12-13	Nov. 11-12	Nov. 10-11	Nov. 15-16	Nov. 14-15	Nov. 13-14
Play-Off 2nd Round	(20) Fri-Sat	Nov. 19-20	Nov. 18-19	Nov. 17-18	Nov. 22-23	Nov. 21-22	Nov. 20-21
Play-Off 3rd Round	(21) Fri-Sat	Nov. 26-27	Nov. 25-26	Nov. 24-25	Nov. 29-30	Nov. 28-29	Nov. 27-28
Championship	(22) Fri-Sat	Dec. 3-4	Dec. 2-3	Dec. 1-2	Dec. 6-7	Dec. 5-6	Dec. 4-5
<b>GOLF</b>							
Season Starts	Mon. of Wk. 5	Aug. 2	Aug. 1	July 31	Aug. 5	Aug. 4	Aug. 3
1st Contest May Be Held	Tues. of Wk. 5	Aug. 3	Aug. 2	Aug. 1	Aug. 6	Aug. 5	Aug. 4
Regional	(13) Mon	Sept. 27	Sept. 26	Sept. 25	Sept. 30	Sept. 29	Sept. 28
State	(14) Tues-Wed	Oct. 5-6	Oct. 4-5	Oct. 3-4	Oct. 8-9	Oct. 7-8	Oct. 6-7
<b>SOCCER</b>							
Season Starts	Mon. of Wk. 5	Aug. 2	Aug. 1	July 31	Aug. 5	Aug. 4	Aug. 3
1st Contest May Be Held	Fri. of Wk. 7	Aug. 20	Aug. 19	Aug. 18	Aug. 23	Aug. 22	Aug. 21
Sectional	(16) Mon-Sat	Oct. 18-23	Oct. 17-22	Oct. 16-21	Oct. 21-26	Oct. 20-25	Oct. 19-24
Regional Final	(17) Tues, Thurs	Oct. 26, 28	Oct. 25, 27	Oct. 24, 26	Oct. 29, 31	Oct. 28, 30	Oct. 27, 29
State	(18) Fri-Sat	Nov. 5-6	Nov. 4-5	Nov. 3-4	Nov. 8-9	Nov. 7-8	Nov. 6-7
<b>SOFTBALL</b>							
Season Starts	Mon. of Wk. 35	Feb. 28	Feb. 27	Feb. 26	Mar. 3	Mar. 2	Mar. 1
1st Contest May Be Held	Wed. of Wk. 37	Mar. 16	Mar. 15	Mar. 13	Mar. 19	Mar. 16	Mar. 17
Sectional	(44-45) Mon-Sat	May 2-14	May 1-13	Apr. 29-May 11	May 5-17	May 4-15	May 3-14
Regional	(46) Mon-Sat	May 16-21	May 15-20	May 13-18	May 19-24	May 18-23	May 17-22
State	(47) Wed-Thurs	May 25-26	May 24-25	May 22-23	May 28-29	May 27-28	May 26-27
<b>SWIMMING</b>							
Season Starts	Mon. of Wk. 17	Oct. 25	Oct. 24	Oct. 23	Oct. 28	Oct. 27	Oct. 26
1st Contest May Be Held	Wed. of Wk. 19	Nov. 10	Nov. 9	Nov. 8	Nov. 13	Nov. 12	Nov. 11
Regional	(31) Sat	Feb. 5	Feb. 4	Feb. 3	Feb. 8	Feb. 7	Feb. 6
State	(33) Thurs-Fri	Feb. 17-18	Feb. 16-17	Feb. 15-16	Feb. 20-21	Feb. 19-20	Feb. 18-19
<b>TENNIS</b>							
Season Starts	Mon. of Wk. 35	Feb. 28	Feb. 27	Feb. 26	Feb. 25	Mar. 2	Mar. 1
1st Contest May Be Held	Wed. of Wk. 37	Mar. 16	Mar. 15	Mar. 13	Mar. 13	Mar. 18	Mar. 17
Regional	(44) Mon-Sat	May 2-7	May 1-8	Apr. 29-May 4	Apr. 29-May 4	May 4-9	May 3-8
State	(45) Thurs-Sat	May 12-14	May 11-13	May 10-12	May 9-11	May 14-16	May 13-15
<b>TRACK</b>							
Season Starts	Mon. of Wk. 35	Feb. 28	Feb. 27	Feb. 26	Mar. 3	Mar. 2	Mar. 1
1st Contest May Be Held	Wed. of Wk. 37	Mar. 16	Mar. 15	Mar. 13	Mar. 19	Mar. 18	Mar. 17
Regional	(45) Wed-Sat	May 11-14	May 10-13	May 8-11	May 14-17	May 13-16	May 12-15
State	(46) Fri-Sat	May 20-21	May 19-20	May 17-18	May 23-24	May 22-23	May 21-22
<b>VOLLEYBALL</b>							
Season Starts	Mon. of Wk. 6	Aug. 9	Aug. 8	Aug. 7	Aug. 6	Aug. 11	Aug. 10
1st Contest May Be Held	Wed. of Wk. 8	Aug. 25	Aug. 24	Aug. 23	Aug. 28	Aug. 27	Aug. 26
Sectional	(18) Mon-Thurs	Nov. 1-4	Oct. 31-Nov. 3	Oct. 30-Nov. 2	Oct. 29-Nov. 1	Nov. 3-6	Nov. 2-5
Regional	(18) Sat	Nov. 6	Nov. 5	Nov. 4	Nov. 3	Nov. 8	Nov. 7
State	(19) Fri-Sat	Nov. 12-13	Nov. 11-12	Nov. 10-11	Nov. 9-10	Nov. 14-15	Nov. 13-14
<b>WRESTLING</b>							
Season Starts	Mon. of Wk. 20	Nov. 15	Nov. 14	Nov. 13	Nov. 18	Nov. 17	Nov. 16
1st Contest May Be Held	Wed. of Wk. 22	Dec. 1	Nov. 30	Nov. 29	Dec. 4	Dec. 3	Dec. 2
Regional	(33) Sat	Feb. 19	Feb. 18	Feb. 17	Feb. 22	Feb. 21	Feb. 20
State	(35) Thurs-Sat	Mar. 3-5	Mar. 2-4	Feb. 29-Mar. 2	Mar. 6-8	Mar. 5-7	Mar. 4-6

WVSSAC000207

**MIDDLE SCHOOL  
WVSSAC STANDARDIZED CALENDAR  
2021-2027**

	Date and-or Week No.	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027
<b>BAND</b>							
State Contest	Mon. of Wk. 38 to Sat. of Wk. 43	Mar. 21 Apr. 30	Mar. 20 Apr. 29	Mar. 18 Apr. 27	Mar. 21 May 3	Mar. 23 May 2	Mar. 22 May 1
<b>BASEBALL</b>							
Season Starts	Mon. of Wk. 35	Feb. 28	Feb. 27	Feb. 26	Mar. 3	Mar. 2	Mar. 1
1st Contest May Be Held	Wed. of Wk. 37	Mar. 16	Mar. 15	Mar. 13	Mar. 19	Mar. 18	Mar. 17
Season Ends	Sat. of Wk. 45	May 14	May 13	May 11	May 17	May 16	May 15
<b>BASKETBALL BOYS'</b>							
Season Starts	Mon. of Wk. 19	Nov. 8	Nov. 7	Nov. 6	Nov. 11	Nov. 10	Nov. 9
1st Contest May Be Held	Wed. of Wk. 22	Dec. 1	Nov. 30	Nov. 29	Dec. 4	Dec. 3	Dec. 2
Season Ends	Sat. of Wk. 34	Feb. 26	Feb. 25	Feb. 24	Mar. 1	Feb. 28	Feb. 27
<b>BASKETBALL GIRLS'</b>							
Season Starts	Mon. of Wk. 18	Nov. 1	Oct. 31	Oct. 30	Nov. 4	Nov. 3	Nov. 2
1st Contest May Be Held	Wed. of Wk. 21	Nov. 24	Nov. 23	Nov. 22	Nov. 27	Nov. 26	Nov. 25
Season Ends	Sat. of Wk. 33	Feb. 19	Feb. 18	Feb. 17	Feb. 22	Feb. 21	Feb. 20
<b>CHEERLEADING</b>							
Season Starts	Mon. of Wk. 6	Aug. 9	Aug. 8	Aug. 7	Aug. 12	Aug. 11	Aug. 10
Season Ends	Sat. of Wk. 34	Feb. 26	Feb. 25	Feb. 24	Mar. 1	Feb. 28	Feb. 27
<b>CROSS COUNTRY</b>							
Season Starts	Mon. of Wk. 5	Aug. 2	Aug. 1	July 31	Aug. 5	Aug. 4	Aug. 3
1st Contest May Be Held	Wed. of Wk. 7	Aug. 18	Aug. 17	Aug. 16	Aug. 21	Aug. 20	Aug. 19
Season Ends	Tues. of Wk. 16	Oct. 19	Oct. 18	Oct. 17	Oct. 22	Oct. 21	Oct. 20
<b>FOOTBALL</b>							
Season Starts	Mon. of Wk. 6	Aug. 9	Aug. 8	Aug. 7	Aug. 12	Aug. 11	Aug. 10
1st Contest May Be Held	(9) Mon-Sat	Aug. 30-Sept. 4	Aug. 29-Sept. 3	Aug. 28-Sept. 2	Sept. 2-7	Sept. 1-6	Aug. 31-Sept. 5
Season Ends	(17) Sat	Oct. 30	Oct. 29	Oct. 28	Nov. 2	Nov. 1	Oct. 31
<b>GOLF</b>	There shall be one season for golf in middle school, either fall or spring; however, the season selected shall be no longer than 10 weeks.						
<b>SOCCER</b>							
Season Starts	Mon. of Wk. 6	Aug. 9	Aug. 8	Aug. 7	Aug. 12	Aug. 11	Aug. 10
1st Contest May Be Held	Mon. of Wk. 9	Aug. 30	Aug. 29	Aug. 28	Sept. 2	Sept. 1	Aug. 31
Season Ends	Sat. of Wk. 17	Oct. 30	Oct. 29	Oct. 28	Nov. 2	Nov. 1	Oct. 31
<b>SOFTBALL</b>							
Season Starts	Mon. of Wk. 35	Feb. 28	Feb. 27	Feb. 26	Mar. 3	Mar. 2	Mar. 1
1st Contest May Be Held	Wed. of Wk. 37	Mar. 16	Mar. 15	Mar. 13	Mar. 19	Mar. 18	Mar. 17
Season Ends	Sat. of Wk. 45	May 14	May 13	May 11	May 17	May 16	May 15
<b>SWIMMING</b>							
Season Starts	Mon. of Wk. 17	Oct. 25	Oct. 24	Oct. 23	Oct. 28	Oct. 27	Oct. 26
1st Contest May Be Held	Wed. of Wk. 19	Nov. 10	Nov. 9	Nov. 8	Nov. 13	Nov. 12	Nov. 11
Season Ends	Sat. of Wk. 32	Feb. 12	Feb. 11	Feb. 10	Feb. 15	Feb. 14	Feb. 13
<b>TENNIS</b>	There shall be one season for tennis in middle school, either fall or spring; however, the season selected shall be no longer than 12 weeks.						
<b>TRACK</b>							
Season Starts	Mon. of Wk. 35	Feb. 28	Feb. 27	Feb. 26	Mar. 3	Mar. 2	Mar. 1
1st Contest May Be Held	Wed. of Wk. 37	Mar. 16	Mar. 15	Mar. 13	Mar. 19	Mar. 18	Mar. 17
Season Ends	Thurs. of Wk. 46	May 19	May 18	May 16	May 22	May 21	May 20
<b>VOLLEYBALL</b>							
Season Starts	Mon. of Wk. 7	Aug. 16	Aug. 15	Aug. 14	Aug. 19	Aug. 18	Aug. 17
1st Contest May Be Held	Wed. of Wk. 9	Sept. 1	Aug. 31	Aug. 30	Sept. 4	Sept. 3	Sept. 2
Season Ends	Sat. of Wk. 17	Oct. 30	Oct. 29	Oct. 28	Nov. 2	Nov. 1	Oct. 31
<b>WRESTLING</b>							
Season Starts	Mon. of Wk. 19	Nov. 8	Nov. 7	Nov. 6	Nov. 11	Nov. 10	Nov. 9
1st Contest May Be Held	Wed. of Wk. 22	Dec. 1	Nov. 30	Nov. 29	Dec. 4	Dec. 3	Dec. 2
Season Ends	Sat. of Wk. 33	Feb. 19	Feb. 18	Feb. 17	Feb. 22	Feb. 21	Feb. 20

NATIONAL FEDERATION  
STANDARDIZED PROCEDURE FOR NUMBERING CALENDAR WEEKS

2021-22	2022-23	2023-24	2024-25	2025-26
1 7/4-7/10	7/3-7/9	7/2-7/8	7/7-7/13	7/6-7/12
2 7/11-7/17	7/10-7/16	7/9-7/15	7/14-7/20	7/13-7/19
3 7/18-7/24	7/17-7/23	7/16-7/22	7/21-7/27	7/20-7/26
4 7/25-7/31	7/24-7/30	7/23-7/29	7/28-8/3	7/27-8/2
5 8/1-8/7	7/31-8/6	7/30-8/5	8/4-8/10	8/3-8/9
6 8/8-8/14	8/7-8/13	8/6-8/12	8/11-8/17	8/10-8/16
7 8/15-8/21	8/14-8/20	8/13-8/19	8/18-8/24	8/17-8/23
8 8/22-8/28	8/21-8/27	8/20-8/26	8/25-8/31	8/24-8/30
9 8/29-9/4	8/28-9/3	8/27-9/2	9/1-9/7	8/31-9/6
10 9/5-9/11	9/4-9/10	9/3-9/9	9/8-9/14	9/7-9/13
11 9/12-9/18	9/11-9/17	9/10-9/16	9/15-9/21	9/14-9/20
12 9/19-9/25	9/18-9/24	9/17-9/23	9/22-9/28	9/21-9/27
13 9/26-10/2	9/25-10/1	9/24-9/30	9/29-10/5	9/28-10/4
14 10/3-10/9	10/2-10/8	10/1-10/7	10/6-10/12	10/05-10/11
15 10/10-10/16	10/9-10/15	10/8-10/14	10/13-10/19	10/12-10/18
16 10/17-10/23	10/16-10/22	10/15-10/21	10/20-10/26	10/19-10/25
17 10/24-10/30	10/23-10/29	10/22-10/28	10/27-11/2	10/26-11/1
18 10/31-11/6	10/30-11/5	10/29-11/4	11/3-11/9	11/2-11/8
19 11/7-11/13	11/6-11/12	11/5-11/11	11/10-11/16	1/9-11/15
20 11/14-11/20	11/13-11/19	11/12-11/18	11/17-11/23	11/16-11/22
21 11/21-11/27	11/20-11/26	11/19-11/25	11/24-11/30	11/23-11/29
22 11/28-12/4	11/27-12/3	11/26-12/2	12/1-12/7	11/30-12/6
23 12/5-12/11	12/4-12/10	12/3-12/9	12/8-12/14	12/7-12/13
24 12/12-12/18	12/11-12/17	12/10-12/16	12/15-12/21	12/14-12/20
25 12/19-12/25	12/18-12/24	12/17-12/23	12/22-12/28	12/21-12/27
26 12/26-1/1	12/25-12/31	12/24-12/30	12/29-1/4	12/28-1/3
27 1/2-1/8	1/1-1/7	12/31-1/6	1/5-1/11	1/4-1/10
28 1/9-1/15	1/8-1/14	1/7-1/13	1/12-1/18	1/11-1/17
29 1/16-1/22	1/15-1/21	1/14-1/20	1/19-1/25	1/18-1/24
30 1/23-1/29	1/22-1/28	1/21-1/27	1/26-2/1	1/25-1/31
31 1/30-2/5	1/29-2/4	1/28-2/3	2/2-2/8	2/1-2/7
32 2/6-2/12	2/5-2/11	2/4-2/10	2/9-2/15	2/8-2/14
33 2/13-2/19	2/12-2/18	2/11-2/17	2/16-2/22	2/15-2/21
34 2/20-2/26	2/19-2/25	2/18-2/24	2/23-3/1	2/22-2/28
35 2/27-3/5	2/26-3/4	2/25-3/2	3/2-3/8	3/1-3/7
36 3/6-3/12	3/5-3/11	3/3-3/9	3/9-3/15	3/8-3/14
37 3/13-3/19	3/12-3/18	3/10-3/16	3/16-3/22	3/15-3/21
38 3/20-3/26	3/19-3/25	3/17-3/23	3/23-3/29	3/22-3/28
39 3/27-4/2	3/26-4/1	3/24-3/30	3/30-4/5	3/29-4/4
40 4/3-4/9	4/2-4/8	3/31-4/6	4/6-4/12	4/5-4/11
41 4/10-4/16	4/9-4/15	4/7-4/13	4/13-4/19	4/12-4/18
42 4/17-4/23	4/16-4/22	4/14-4/20	4/20-4/26	4/19-4/25
43 4/24-4/30	4/23-4/29	4/21-4/27	4/27-5/3	4/26-5/2
44 5/1-5/7	4/30-5/6	4/28-5/4	5/4-5/10	5/3-5/9
45 5/8-5/14	5/7-5/13	5/5-5/11	5/11-5/17	5/10-5/16
46 5/15-5/21	5/14-5/20	5/12-5/18	5/18-5/24	5/17-5/23
47 5/22-5/28	5/21-5/27	5/19-5/25	5/25-5/31**	5/24-5/30**
48 5/29-6/4**	5/28-6/3**	5/26-6/1**	6/1-6/7	5/31-6/6
49 6/5-6/11	6/4-6/10	6/2-6/8	6/8-6/14	6/7-6/13
50 6/12-6/18	6/11-6/17	6/9-6/15	6/15-6/21	6/14-6/20
51 6/19-6/25	6/18-7/4	6/16-6/22	6/22-6/28	6/21-6/27
52 6/26-7/2	6/25-7/1	6/23-6/29	6/29-7/5	6/28-7/4

\* Easter Sunday

\*\* Memorial Day week



## APPENDIX C

## PAST MEMBERS - BOARD OF DIRECTORS

## 1916-17

John G. Graham (Huntington), President  
Benjamin H. Williams (Bluefield), Vice President  
H.P. Johns (Wheeling), Secretary-Treasurer

## 1917-19

John G. Graham (Huntington), President  
Benjamin H. Williams (Bluefield), Vice President  
George H. Colebank (Fairmont), Secretary-Treasurer

## 1919-20

John G. Graham (Huntington), President  
John L. Stewart (Parkersburg), Vice President  
H.W. Piggott (Grafton), Secretary-Treasurer

## 1920-22

Lakin F. Roberts (Charleston), President  
Jesse E. Riley (New Martinsville), Vice President  
A.J. Gibson (Elkins), Secretary-Treasurer

## 1922-23

R.W. Shumaker (Spencer), President  
Walter Riddle (Bridgeport), Vice President  
A.J. Gibson (Elkins), Secretary-Treasurer

## 1923-25

H.W. Piggott (Parkersburg), President  
E.E. Church (Martinsburg), Vice President  
H.Y. Clark (Grafton), Secretary-Treasurer

## 1925-26

S.C. Grose (Welch), President  
P.E. King (Wheeling), Vice President  
H.Y. Clark (Grafton), Secretary-Treasurer

## 1926-27

S.C. Grose (Welch), President  
O.D. Lambert (Kingwood), Vice President  
C.M. Stalnaker (Cairo), Secretary-Treasurer

## 1927-29

Leslie D. Moore (Spencer), President  
E.Q. Swan (Huntington), Vice President  
C.M. Stalnaker (Cairo), Secretary-Treasurer

## 1929-30

E.Q. Swan (Huntington), President  
E.G. Kuhn (Farmington), Vice President  
C.M. Stalnaker (Beckley), Secretary-Treasurer

## 1930-31

E.G. Kuhn (Farmington), President  
I.E. Ewing (Wheeling), Vice President  
C.M. Stalnaker (Logan), Secretary-Treasurer

## 1931-32

I.E. Ewing (Wheeling), President  
Vice President, Vacant — Appointed for each meeting  
S. Key Dickinson (Clarksburg), Secretary-Treasurer

## 1932-34

I.E. Ewing (Wheeling), President  
Rocco J. Gorman (Charleston), Vice President  
S. Key Dickinson (Clarksburg), Secretary-Treasurer

## 1934-39

C.W. Jackson (Bluefield), President  
C.A. Tesch (Salem), Vice President  
I.E. Ewing (Wheeling), Secretary-Treasurer

## 1939-44

George M. Speicher (Dunbar), President  
Dan H. Perdue (Fayetteville), Vice President  
I.E. Ewing (Wheeling), Secretary-Treasurer

## 1944-46

George M. Speicher (Dunbar), President  
Dan H. Perdue (Fayetteville), Vice President  
I.E. Ewing (Wheeling), Secretary-Treasurer

## 1946-47

George M. Speicher (Dunbar), President  
Dan H. Perdue (Fayetteville), Vice President  
Fred P. Weihs (Weston), Treasurer

## 1947-48

George M. Speicher (Dunbar), President  
C.F. Walker (Wellsburg), Vice President  
Fred P. Weihs (Weston), Treasurer

## 1948-53

C.F. Walker (Wellsburg), President  
Jonathan Y. Lowe (Milton), Vice President  
Fred P. Weihs (Weston), Treasurer

## 1953-59

Jonathan Y. Lowe (Milton and Beverly Hills), President  
W.G. Eismen (Charles Town), Vice President  
Fred P. Weihs (Weston), Treasurer

## 1959-60

Jonathan Y. Lowe (Beverly Hills), President  
John W. Saunders (Shady Spring), Vice President  
Fred P. Weihs (Weston), Treasurer

## 1960-61

Jonathan Y. Lowe (Beverly Hills), President  
Jake H. Moser (Saint Albans Junior High), Vice President  
Fred P. Weihs (Weston), Treasurer

## 1962-64

Jake H. Moser (Saint Albans Junior High), President  
Roy Coffman (Lewisburg), Vice President  
Fred P. Weihs (Weston), Treasurer

## 1964-66

Roy Coffman (Alderson), President  
Larney R. Gump (Barrackville), Vice President  
Fred P. Weihs (Weston), Treasurer

## 1966-68

Fred P. Weihs (Berkeley Springs), President (1967)  
Scott H. Davis (Morgantown), 1967  
Larney R. Gump (Barrackville), Vice President  
Alva T. Ball (Dunbar), Member (1967)  
E.F. Garrity (DuPont Junior High), Member  
Charles W. Dean, Jr., (Gary), Member  
Cliff West (Wayne), Member

## 1968-70

Cliff West (Wayne), President  
Charles W. Dean, Jr., (Gary), Vice President  
Edwin M. Bartrug (Marmet Junior High), Member  
Henry Hamilton (Elkins), Member (1969)  
Robert H. Kidd, State Department of Education (Charleston), Member  
Harry A. Stansbury, State School Boards Assoc. (Charleston), Member

## 1970-71

E.W. Malcolm (Fairmont Senior), President  
 Edwin M. Bartrug (Marmet Junior High), Vice President  
 C.W. Dean (Gary), Member  
 Jackson L. Flanigan (Charles Town), Member  
 Ray H. Watson (Wirt County), Member  
 Robert H. Kidd, State Department of Education (Charleston), Member  
 Orlan C. Fowler, State School Boards Assoc. (Clarksburg), Member  
 William H. Calhoun (Herbert Hoover), Ex-Officio Member

## 1971-72

Edwin M. Bartrug (Marmet Junior High), President  
 Ray H. Watson (Wirt County), Vice President  
 Jackson L. Flanigan (Charles Town), Member  
 Acie B. Stewart (Herndon), Member  
 Robert H. Kidd, State Department of Education (Charleston), Member  
 Orlan C. Fowler, State School Boards Assoc. (Clarksburg), Member

## 1972-73

Ray H. Watson (Wirt County), President  
 Jackson L. Flanigan (Jefferson), Vice President  
 Acie B. Stewart (Herndon), Member  
 Keith L. Holt (East Fairmont), Member  
 C.P. Wells (Nicholas County), Member  
 Robert H. Kidd, State Department of Education (Charleston), Member  
 Orlan C. Fowler, State School Boards Association (Clarksburg), Member

## 1973-74

Keith L. Holt (East Fairmont), President  
 William G. Griffith (Horace Mann Junior High), Vice President  
 Ray H. Watson (Wirt County), Member  
 Acie B. Stewart (Herndon), Member  
 Ray Waldo, Jr. (Martinsburg Senior), Member  
 Robert H. Kidd, State Department of Education (Charleston), Member  
 Orlan C. Fowler, State School Boards Assoc. (Clarksburg), Member

## 1974-75

Acie B. Stewart (Herndon), President  
 Ray Waldo, Jr. (Martinsburg Senior), Vice President  
 Ray H. Watson (Wirt County), Member  
 Keith L. Holt (East Fairmont), Member  
 John W. Lyons (Herbert Hoover), Member  
 Robert H. Kidd, State Department of Education (Charleston), Member  
 Carlton A. Buttrely, State School Boards Assoc. (St. Marys), Member

## 1975-76

Ray Waldo, Jr. (Martinsburg Senior), President  
 James E. Hamrick (Clendenin Junior High), Vice President  
 Keith L. Holt (East Fairmont), Member  
 Robert W. Eakins (Williamstown), Member  
 Acie B. Stewart (Herndon), Member  
 Robert L. Turner (Big Creek), Ex-Officio Member  
 Robert H. Kidd, State Department of Education (Charleston), Member  
 Carlton A. Buttrely, State School Boards Assoc. (St. Marys), Member

## 1976-77

James E. Hamrick (Clendenin Junior High), President  
 Robert W. Eakins (Williamstown), Vice President  
 Ray Waldo, Jr. (Martinsburg Senior), Member  
 Keith L. Holt (East Fairmont), Member  
 George W. Keatley (Princeton), Member  
 Robert H. Kidd, State Department of Education (Charleston), Member  
 Carlton A. Buttrely, State School Boards Assoc. (St. Marys), Member  
 Merrell S. McIlwain (South Charleston), Ex-Officio Member

## 1977-78

Robert W. Eakins (Williamstown), President  
 George W. Keatley (Princeton), Vice President  
 Warren Carter (Jefferson), Member  
 Keith L. Holt (East Fairmont), Member  
 James E. Hamrick (Clendenin Junior High), Member  
 Robert H. Kidd, State Department of Education (Charleston), Member  
 Carlton A. Buttrely, State School Boards Assoc. (St. Marys), Member

## 1978-79

George W. Keatley (Princeton), President  
 Warren Carter (Jefferson), Vice President  
 James E. Hamrick (Clendenin Junior High), Member  
 Robert W. Eakins (Williamstown), Member  
 Sam Scolapio, Jr. (Washington Irving), Member  
 Dr. Daniel B. Taylor, State Department of Education (Charleston), Member  
 Carlton A. Buttrely, State School Boards Assoc. (St. Marys), Member  
 Paris Hume (Greenbrier East), Ex-Officio Member

## 1979-80

Warren L. Carter (Jefferson), President  
 Sam Scolapio, Jr. (Washington Irving), Vice President  
 Robert W. Eakins (Williamstown), Member  
 George W. Keatley (Princeton), Member  
 Robert L. Perkins (Nicholas County), Member  
 Edna Mae Phillips, State Department of Education (Beckley), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 John T. Grossi (Weir), Ex-Officio Member

## 1980-81

Sam Scolapio, Jr. (Washington Irving), President  
 Robert L. Perkins (Nicholas County), Vice President  
 George W. Keatley (Princeton), Member  
 Warren L. Carter (Jefferson), Member  
 William F. Gainer (Hamilton Jr.), Member  
 Edna Mae Phillips, State Dept. of Education (Beckley), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 John T. Grossi (Weir), Ex-Officio Member

## 1981-82

Robert L. Perkins (Nicholas County), President  
 William F. Gainer (Hamilton Junior High), Vice President  
 Warren L. Carter (Jefferson), Member  
 Sam Scolapio, Jr. (Washington Irving), Member  
 James T. Lane (Northfork), Member  
 Edna Mae Phillips, State Department of Education (Beckley), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 Richard D. Johnson (Broadway Junior), Ex-Officio Member

## 1982-83

William F. Gainer (Hamilton Junior High), President  
 James T. Lane (Northfork), Vice President  
 Robert L. Perkins (Nicholas County), Member  
 Sam Scolapio, Jr. (Washington Irving), Member  
 John J. Cole (Musseleman), Member  
 Edna Mae Phillips, State Department of Education (Beckley), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 Jackson L. Flanigan, WV Assoc. of School Adm. (Martinsburg), Member  
 Norma L. Winter (Sissonville), Ex-Officio Member

## 1983-84

James T. Lane (Northfork), President  
 John J. Cole (Musseleman), Vice President  
 Robert L. Perkins (Nicholas County), Member  
 William F. Gainer (Hamilton Junior High), Member  
 Vincent Paoletti (John Marshall), Member  
 Edna Mae Phillips, State Department of Education (Beckley), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 Jackson L. Flanigan, WV Assoc. of School Adm. (Martinsburg), Member  
 James O. Gore (Petersburg), Ex-Officio Member

## 1984-85

John J. Cole (Musselman), President  
 Vincent Paoletti (John Marshall), Vice President  
 William F. Gainer (Hamilton Junior High), Member  
 James T. Lane (Northfork), Member  
 David Gillispie (Washington Junior High, South Charleston), Member  
 Edna Mae Phillips, State Department of Education (Beckley), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 Jackson L. Flanigan, WV Assoc. of School Adm. (Martinsburg), Member  
 Edward B. Prendergast (Richwood), Ex-Officio Member

## 1985-86

Vincent Paoletti (John Marshall), President  
 David Gillispie (Lincoln Junior High), Vice President  
 John J. Cole (Musselman), Member  
 James T. Lane (Northfork), Member  
 Jack D. Wiseman (Ripley), Member  
 Jackson L. Flanigan, WV Assoc. of School Adm. (Martinsburg), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 Edna Mae Phillips, State Department of Education (Beckley), Member  
 Dr. Russell George, (Berkeley Springs), Ex-Officio Member

## 1986-87

David Gillispie (McKinley Junior High), President  
 Jack D. Wiseman (Ripley), Vice President  
 John J. Cole (Musselman), Member  
 George W. Keatley (Princeton), Member  
 Vincent Paoletti (John Marshall), Member  
 Jackson L. Flanigan, WV Assoc. of School Adm. (Martinsburg), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 Edna Mae Phillips, State Department of Education (Beckley), Member  
 Harold Nicholson (Parkersburg), Ex-Officio Member

## 1987-88

David Gillispie (McKinley Junior High), President  
 Jack D. Wiseman (Ripley), Vice President  
 Dr. Russell George (Berkeley Springs), Member  
 George W. Keatley (Princeton), Member  
 Vincent Paoletti (John Marshall), Member  
 Dr. Jackson L. Flanigan, WV Assoc. of School Adm. (Martinsburg), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 Edna Mae Phillips, State Department of Education (Beckley), Member  
 Gary J. McClung (Meadow Bridge), Ex-Officio Member

## 1988-89

Jack D. Wiseman (Ripley), President  
 George W. Keatley (Princeton), Vice President  
 Dr. Russell George (Berkeley Springs), Member  
 David Gillispie (McKinley Junior High), Member  
 Gerald Trembush (Moundsville Junior High), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 Kathryn Roten, State Department of Education (Charleston), Member  
 Stephen Baldwin, WV Assoc. of School Administrators, (Lewisburg), Member  
 Michael Kessinger (Bramwell), Ex-Officio Member

## 1989-90

George Keatley (Princeton), President  
 Gerald Trembush (Moundsville Junior High), Vice President  
 Thomas Kidd (John Adams Junior High School), Member  
 Donald Knotts (Frankfort), Member  
 Jack D. Wiseman (Ripley), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 Kathryn Roten, State Department of Education (Charleston), Member  
 Stephen Baldwin, WV Assoc. of School Administrators, (Lewisburg), Member  
 Gary Greenfield, (Hedgesville Middle), Ex-Officio Member

## 1990-91

Gerald Trembush (Moundsville Junior High), President  
 Donald Knotts (Frankfort), Vice President  
 Thomas Kidd (John Adams Junior High), Member  
 George Keatley (Princeton), Member  
 Jack Wiseman (Ripley), Member  
 Jimmy D. Morris, State School Boards Assoc. (Clay), Member  
 Kathryn Roten, State Department of Education (Charleston), Member  
 Stephen Baldwin, WV Assoc. of School Administrators, (Lewisburg), Member  
 Robert G. Bonar, (Calhoun County High School), Ex-Officio Member

## 1991-92

Thomas Kidd (John Adams Junior High), President  
 Jack Wiseman (Ripley), Vice President  
 Gerald Trembush (Moundsville Junior High) Member  
 George Keatley (Princeton), Member  
 Frank Aliveto (Hedgesville), Member  
 Jimmy D. Morris, State School Boards Association (Clay), Member  
 Dr. N. Blaine Groves, State Department of Education (Martinsburg), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Mike Cunningham, (Clendenin Junior High School), Ex-Officio Member

## 1992-93

Thomas Kidd (John Adams Junior High), President  
 Jack Wiseman (Ripley), Vice President  
 Gerald Trembush (Moundsville Junior High) Member  
 George Keatley (Princeton), Member  
 Frank Aliveto (Hedgesville), Member  
 Edward W. Fields, State School Boards Association (Hancock), Member  
 Dr. N. Blaine Groves, State Department of Education (Martinsburg), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Mike Cunningham, (Clendenin Junior High School), Ex-Officio Member

## 1993-94

Jack Wiseman (Ripley), President  
 George Keatley (Princeton), Vice President  
 Frank Aliveto (Hedgesville), Member  
 Jimmy Wyatt, (Tyler Consolidated), Member  
 Thomas Kidd (John Adams Junior High), Member  
 Dr. N. Blaine Groves, State Department of Education (Martinsburg), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Gary Ray, Athletic Directors Association (Oak Hill), Member  
 Edward W. Fields, County Boards of Education  
 Leon Pilewski (Washington-Irving), Ex-Officio Member

## 1994-95

Frank Aliveto (Hedgesville), President  
 Joe McClung (Meadow Bridge), Vice President  
 Fred Aldridge (Ravenswood), Member  
 Dr. Charles Wagoner, State Board of Education (Weston), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Gary Ray, Athletic Directors Association (Oak Hill), Member  
 Jimmy Wyatt (Tyler Consolidated), Member  
 Dennis Bennett (Richwood), Member  
 Dr. N. Blaine Groves, State Department of Education (Martinsburg), Member  
 Edward W. Fields, County Board of Education (New Cumberland), Member  
 Wilma Zigmund (Logan), Ex-Officio Member

## 1995-96

Joe McClung (Meadow Bridge), President  
 Jimmy Wyatt (Tyler Consolidated), Vice President  
 Frank Aliveto (Hedgesville), President  
 Fred Aldridge (Ravenswood), Member  
 Dr. Charles Wagoner, State Board of Education (Weston), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Mike Hayden, Athletic Directors Association (Parkersburg), Member  
 Dennis Bennett (Richwood), Member  
 Edward W. Fields, County Board of Education (New Cumberland), Member

## 1996-97

Jimmy Wyatt (Tyler Consolidated), President  
 Dennis Bennett (Richwood), Vice President  
 Frank Aliveto (Hedgesville), Member  
 Joe McClung (Meadow Bridge), Member  
 Fred Aldridge (Ravenswood), Member  
 Dr. Charles Wagoner, State Board of Education (Weston), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Mike Hayden, Athletic Directors Association (Parkersburg), Member  
 Edward W. Fields, County Board of Education (New Cumberland), Member  
 Paul J. Morris, State Department of Education (Dunbar), Member

## 1997-98

Dennis Bennett (Richwood), President  
 Joe McClung (Meadow Bridge), Vice President  
 Charles S. Buell (Huntington), Member  
 Jimmy Wyatt (Tyler Consolidated), Member  
 David Rogers (Martinsburg South Middle), Member  
 Dr. Charles Wagoner, State Board of Education (Weston), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Don Hetzel, Athletic Directors Association (Jefferson), Member  
 Edward W. Fields, County Board of Education (New Cumberland), Member  
 Paul J. Morris, State Department of Education (Dunbar), Member

## 1998-99

Joe McClung (Meadow Bridge), President  
 Roy McCas (Parkersburg South), Member  
 Dennis Bennett (Richwood), Member  
 Jimmy Wyatt (Tyler Consolidated), Member  
 David Rogers (Martinsburg South Middle), Member  
 J. D. "Jimmy" Morris, State Board of Education (Clay), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Don Hetzel, Athletic Directors Association (Jefferson), Member  
 Keith Donley, County Board of Education (Wellsburg), Member  
 Paul J. Morris, State Department of Education (Dunbar), Member

## 1999-00

Joe McClung (Meadow Bridge), President  
 David Rogers (Martinsburg South Middle), Vice President  
 Roy McCas (Parkersburg South), Member  
 Dennis Bennett (Richwood), Member  
 Jimmy Wyatt (Tyler Consolidated), Member  
 J. D. "Jimmy" Morris, State Board of Education (Clay), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Don Dellinger, Athletic Directors Association (Hedgesville), Member  
 Keith Donley, County Board of Education (Wellsburg), Member  
 Paul J. Morris, State Department of Education (Dunbar), Member

## 2000-01

David Rogers (Martinsburg South Middle), President  
 Jimmy Wyatt (Tyler Consolidated), Vice President  
 Joe McClung (Meadow Bridge), Member  
 Roy McCas (Parkersburg South), Member  
 Dennis Bennett (Richwood), Member  
 Ronald Spencer, State Board of Education (Smithburg), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Don Dellinger, Athletic Directors Association (Hedgesville), Member  
 Keith Donley, County Board of Education (Wellsburg), Member  
 Paul J. Morris, State Department of Education (Dunbar), Member

## 2001-02

Jimmy Wyatt (Tyler Consolidated), President  
 Dennis Bennett (Richwood), Vice President  
 Ray Londeree (Oak Hill), Member  
 David Rogers (Martinsburg South Middle), Member  
 Ronald Spencer, State Board of Education (Smithburg), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Harold Erwin, Athletic Directors Association (Eleanor), Member  
 Keith Donley, County Board of Education (Wellsburg), Member  
 Paul J. Morris, State Department of Education (Dunbar), Member

## 2002-03

Dennis Bennett (Richwood), President  
 Ray Londeree (Oak Hill), Vice President  
 Jimmy Wyatt (Tyler Consolidated), Member  
 David Rogers (Martinsburg South Middle), Member  
 Ronald Spencer, State Board of Education (Smithburg), Member  
 Stephen Baldwin, WV Assoc. of School Administrators (Lewisburg), Member  
 Harold Erwin, Athletic Directors Association (Eleanor), Member  
 Keith Donley, County Board of Education (Wellsburg), Member  
 Paul J. Morris, State Department of Education (Dunbar), Member  
 William Niday (Parkersburg), Member

## 2003-04

Ray Londeree (Oak Hill), President  
 David Rogers (Martinsburg South Middle), Vice President  
 Dennis Bennett (Richwood), Member  
 Warren Grace (Paden City), Member  
 Ronald Spencer, State Board of Education (Smithburg), Member  
 Frank Aliveto, County Superintendents (Berkeley Co.), Member  
 Harold Erwin, Athletic Directors Association (Eleanor), Member  
 Keith Donley, County Board of Education (Wellsburg), Member  
 Paul J. Morris, State Department of Education (Dunbar), Member  
 Tom Eschbacher (Parkersburg South), Member

## 2004-05

Ray Londeree (Oak Hill), President  
 David Rogers (Martinsburg South Middle), Vice President  
 Thomas Kidd (John Adams JH), Member  
 Warren Grace (Paden City), Member  
 Ronald Spencer, State Board of Education (Smithburg), Member  
 Frank Aliveto, County Superintendents (Berkeley Co.), Member  
 Harold Erwin, Athletic Directors Association (Eleanor), Member  
 Keith Donley, County Board of Education (Wellsburg), Member  
 Paul J. Morris, State Department of Education (Dunbar), Member  
 Tom Eschbacher (Parkersburg South), Member

## 2005-06

David Rogers (Martinsburg South Middle), President  
 Thomas Kidd (John Adams JH), Vice President  
 Ray Londeree (Oak Hill), Member  
 Warren Grace (Paden City), Member  
 Ronald Spencer, State Board of Education (Smithburg), Member  
 Frank Aliveto, County Superintendents (Berkeley Co.), Member  
 Harold Erwin, Athletic Directors Association (Eleanor), Member  
 Jack Wiseman, County Board of Education (Ravenswood), Member  
 Sandra Chapman, State Department of Education (Wheeling), Member  
 Tom Eschbacher (Parkersburg South), Member

## 2006-07

Warren Grace (Paden City), President  
 Thomas Kidd (John Adams JH), Vice President  
 Ray Londeree (Valley FJ), Member  
 David Rogers (Martinsburg South Middle), Member  
 Tom Eschbacher (Parkersburg South), Member  
 Ronald Spencer, State Board of Education (Smithburg), Member  
 Frank Aliveto, County Superintendents (Berkeley Co.), Member  
 Harold Erwin, Athletic Directors Association (Eleanor), Member  
 Jack Wiseman, County Board of Education (Ravenswood), Member  
 Sandra Chapman, State Department of Education (Wheeling), Member

## 2007-08

Thomas Kidd (John Adams JH), President  
 Tom Eschbacher (Parkersburg South), Vice President  
 Warren Grace (Paden City), Member  
 Ben Disibbio (PikeView), Member  
 Don Dellinger (Hedgesville), Member  
 Ronald Spencer, State Board of Education (Smithburg), Member  
 Frank Aliveto, County Superintendents (Berkeley Co.), Member  
 Harold Erwin, Athletic Directors Association (Eleanor), Member  
 Jack Wiseman, County Board of Education (Ravenswood), Member  
 Sandra Chapman, State Department of Education (Wheeling), Member



## 2008-09

Tom Eschbacher (Parkersburg South), President  
 Ben Disibbio (PikeView), Vice President  
 Thomas Kidd (John Adams JH), Member  
 Warren Grace (Paden City), Member  
 Don Dellinger (Hedgesville), Member  
 Ronald Spencer, State Board of Education (Smithburg), Member  
 Edward Toman, County Superintendents (Gilmer Co.), Member  
 Harold Erwin, Athletic Directors Association (Eleanor), Member  
 Ernie Moore, County Board of Education (Gassaway), Member  
 Sandra Chapman, State Department of Education (Wheeling), Member

## 2009-10

Ben Disibbio (PikeView), President  
 Don Dellinger (Hedgesville), Vice President  
 Mike Arbogast (South Charleston), Member  
 Tom Eschbacher (Parkersburg South), Member  
 Warren Grace (Paden City), Member  
 Ronald Spencer, WV State Superintendents Designee (Smithburg), Member  
 Edward Toman, County Superintendents (Gilmer Co.), Member  
 Jeff Bailey, Athletic Directors Association (Morgantown), Member  
 Ernie Moore, County Board of Education (Gassaway), Member  
 Robert Dunlevy, WV State Board of Education (Wheeling), Member

## 2010-11

Don Dellinger (Hedgesville), President  
 Mike Arbogast (South Charleston), Vice President  
 Tom Eschbacher (Parkersburg South), Member  
 Bernie Dolan (Wheeling Park), Member  
 Ben Disibbio (PikeView), Member  
 Ronald Spencer, WV State Superintendents Designee (Smithburg), Member  
 Edward Toman, County Superintendents (Gilmer Co.), Member  
 Jeff Bailey, Athletic Directors Association (Morgantown), Member  
 Ernie Moore, County Board of Education (Gassaway), Member  
 Robert Dunlevy, WV State Board of Education (Wheeling), Member

## 2011-12

Mike Arbogast (South Charleston), President  
 Bernie Dolan (Wheeling Park), Vice President  
 Don Dellinger (Hedgesville), Member  
 Tom Eschbacher (Parkersburg South), Member  
 Ben Disibbio (PikeView), Member  
 Ronald Spencer, WV State Superintendents Designee (Smithburg), Member  
 Edward Toman, County Superintendents (Gilmer Co.), Member  
 Ron Allen, Athletic Directors Association (Hedgesville), Member  
 Perry Cook, County Board of Education (Oceana), Member  
 Robert Dunlevy, WV State Board of Education (Wheeling), Member

## 2012-13

Bernie Dolan (Wheeling Park), President  
 Tom Eschbacher (Parkersburg South), Vice President  
 David Cottrell (Clay-Battelle), Member  
 Mike Arbogast (South Charleston), Member  
 Ben Disibbio (PikeView), Member  
 Ronald Spencer, WV State Superintendents Designee (Smithburg), Member  
 Edward Toman, County Superintendents (Gilmer Co.), Member  
 Ron Allen, Athletic Directors Association (Hedgesville), Member  
 Jim Crawford, County Board of Education (St. Albans), Member  
 Robert Dunlevy, WV State Board of Education (Wheeling), Member

## 2013-14

Tom Eschbacher (Parkersburg South), President  
 Ben Disibbio (PikeView), Vice President  
 Mike Arbogast (South Charleston), Member  
 David Cottrell (Clay-Battelle), Member  
 Rick Jones (John Marshall), Member  
 Dan Erenrich (Morgantown), Member  
 Eddie Campbell, County Superintendents (Tucker Co.), Member  
 Ted Gillespie, County Board of Education (Princeton), Member  
 Robert Dunlevy, WV State Board of Education (Wheeling), Member  
 Ronald Spencer, WV State Superintendents Designee (Smithburg), Member

## 2014-15

Tom Eschbacher (Parkersburg South), President  
 David Cottrell (Clay-Battelle), Vice President  
 Mike Arbogast (South Charleston), Member  
 Rick Jones (John Marshall), Member  
 Dan Erenrich (Morgantown), Member  
 Craig Lee Loy (Valley [F]), Member  
 Eddie Campbell, County Superintendents (Tucker Co.), Member  
 Gregory Prudich, County Board of Education (Princeton), Member  
 Robert Dunlevy, WV State Board of Education (Wheeling), Member  
 Ronald Spencer, WV State Superintendents Designee (Smithburg), Member

## 2015-16

David Cottrell (Clay-Battelle), President  
 Rick Jones (John Marshall), Vice President  
 Mike Arbogast (South Charleston), Member  
 Craig Lee Loy (Valley [F]), Member  
 Wayne Ryan (Summers County), Member  
 Greg Webb (Huntington), Member  
 Gregory Prudich, County Board of Education (Princeton), Member  
 Eddie Campbell, County Superintendents (Tucker Co.), Member  
 Dr. James Wilson, WV State Board of Education (Glen Dale), Member  
 Robert Dunlevy, WV State Superintendents Designee (Wheeling), Member

## 2016-17

Mike Arbogast (South Charleston), President  
 Craig Lee Loy (Valley [F]), Vice President  
 David Cottrell (Clay-Battelle), Member  
 Harold Erwin (Eleanor, Retired), Member  
 Vacant  
 Vacant  
 Jim Crawford, County Board of Education (St. Albans), Member  
 Eddie Campbell, County Superintendents (Tucker Co.), Member  
 Dr. James Wilson, WV State Board of Education (Glen Dale), Member  
 Robert Dunlevy, WV State Superintendents Designee (Wheeling), Member

## 2017-18

Mike Arbogast (South Charleston), President  
 Craig Lee Loy (Valley [F]), Vice President  
 David Cottrell (Clay-Battelle), Member  
 Jamie Tallman (Union), Member  
 David Nuzum (East Fairmont), Member  
 Richard Summers (Jackson Middle), Member  
 Jim Crawford, County Board of Education (St. Albans), Member  
 Eddie Campbell, County Superintendents (Tucker Co.), Member  
 Dr. James Wilson, WV State Board of Education (Glen Dale), Member  
 Robert Dunlevy, WV State Superintendents Designee (Wheeling), Member

## 2018-19

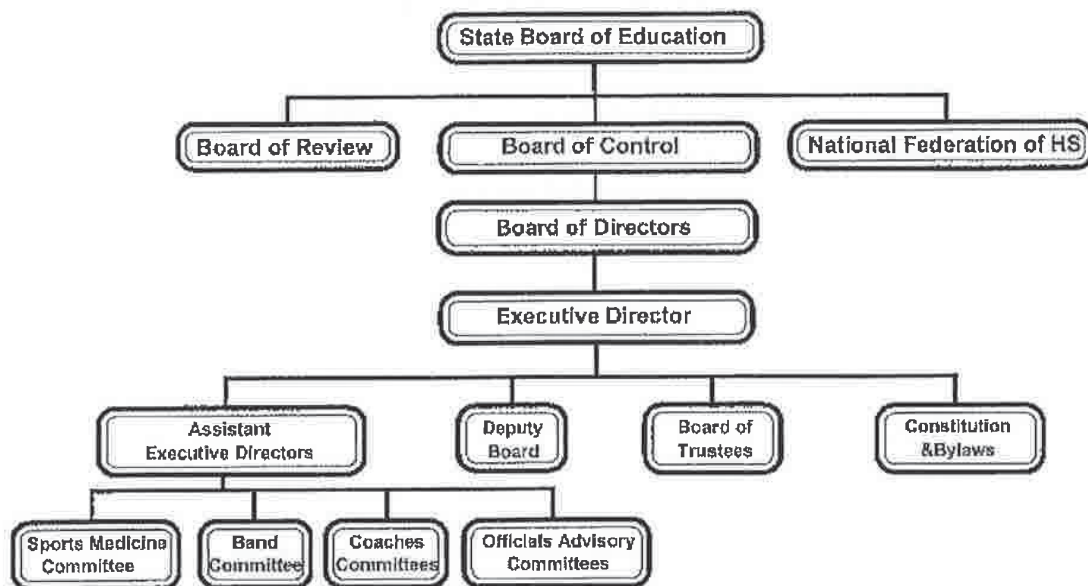
Craig Lee Loy (Valley [F]), President  
 Richard Summers (Jackson Middle), Vice President  
 Mike Arbogast (South Charleston), Member  
 David Cottrell (Clay-Battelle), Member  
 Jamie Tallman (Union), Member  
 Gregory Moore (South Harrison), Member  
 Jim Crawford, County Board of Education (St. Albans), Member  
 Eddie Campbell, County Superintendents (Tucker Co.), Member  
 Dr. James Wilson, WV State Board of Education (Glen Dale), Member  
 Robert Dunlevy, WV State Superintendents Designee (Wheeling), Member

**2019-20**

Richard Summers (Jackson Middle), President  
David Cottrell (Clay-Battelle), Vice President  
Craig Lee Loy (Valley F), Member  
Michael Kelley (Herbert Hoover), Member  
Art Pelitto (Bridgeport Middle), Member  
Gregory Moore (South Harrison), Member  
Jim Crawford, County Board of Education (St. Albans), Member  
Eddie Campbell, County Superintendents (Tucker Co.), Member  
Dr. James Wilson, WV State Board of Education (Glen Dale), Member  
Robert Dunlevy, WV State Superintendents Designee (Wheeling), Member

**2020-21**

David Cottrell (Clay-Battelle), President  
Gregory Moore (South Harrison), Vice President  
Craig Lee Loy (Valley F), Member  
Michael Kelley (Herbert Hoover), Member  
Art Pelitto (Bridgeport Middle), Member  
Jimmy Frashier (Ripley), Member  
Jim Crawford, County Board of Education (St. Albans), Member  
Eddie Campbell, County Superintendents (Tucker Co.), Member  
Dr. James Wilson, WV State Board of Education (Glen Dale), Member  
Robert Dunlevy, WV State Superintendents Designee (Wheeling), Member

**WVSSAC ORGANIZATIONAL CHART**

## INDEX

	Page No.
Administration .....	3
Adoption and Guardianship .....	21
Age .....	17
All-Star Participation .....	XIII; 35
Amateur .....	23
Amendments .....	7
Appointment of Parliamentarian .....	8
Constitution and By-Law Committee .....	8
Procedure .....	8
Attendance Zone .....	19
Awards .....	35
Band .....	62
Awards .....	64
Classification .....	65
Enrollment and Membership .....	62
Festivals .....	62
Sanctioning .....	63
Scholarship .....	62
Baseball .....	45
Basketball (Boys and Girls) .....	45
Bench Clearing .....	60
Board of Directors .....	5
Officers & Duties .....	4
Meetings .....	5
Past Board of Directors Members .....	74
Penalties .....	66
Board of Control .....	2
Administrative Districts .....	3
Meetings .....	3
Board of Trustees .....	13
Appointments .....	13
Duties .....	13
Camps .....	37; 47
"C" Rule (2436-10) .....	25
Certificates of Eligibility .....	41
Cheerleading .....	46
Classification .....	40
Coaches .....	36
Coach Ejection .....	38; 56; 59; 60
Certification .....	36
Out-Of-Season Coaching .....	37
Concussions .....	24
Conduct .....	57
Contest .....	XIII; 42



Contracts .....	44
Courtesy & Identification Card .....	
Principal .....	35
Coaches .....	37
Athletic Director .....	38
Cross Country (Boys and Girls) .....	49
Department of Health and Human Services .....	20
Disciplinary Action .....	62; 64
Ejection Policy .....	62
Eligibility .....	16; 26; 43
Adoption and Guardianship .....	23
Age .....	18
Amateur .....	24
"C" Rule (2436-10) .....	29
Certificates .....	43
Enrollment .....	16
Non-School Participation .....	23
Scholarship .....	18
Semester and Season .....	18
Transfer and Residence .....	19
Emergency Action Plan .....	27
Enrollment .....	15
Executive Director .....	9
Appointment .....	9
Duties .....	9
Protests .....	71
Term of Office .....	9
Football .....	50
Foreign Exchange Students .....	21
Forfeit and Restitution .....	38
Funds .....	7
Annual Dues .....	9
Entry Fees and Assessment .....	9
Expenditures .....	9
Fiscal Year .....	9
Game .....	XII
Golf (Boys and Girls) .....	53
Guardianship .....	23
Ineligible Participant .....	24
Legal Opponents .....	44
Membership .....	1
National Federation of State High School Associations .....	XI; XIII
Calendar .....	75
Sport Rules .....	45
Non-school Participation .....	23
Officials .....	41
Parental Permission .....	62
Penalties .....	64; 70

Physical Examination .....	36
Practice .....	25
Principal - Duties and Responsibilities .....	35
Protests .....	45; 70; 71
Contested Cases .....	71
Game .....	43
Review Board .....	10; 73
School .....	66; 67
Recruiting .....	22
Residence .....	19
Review Board .....	10
Duties .....	11
Membership .....	10
Rules and Regulations (Definition Of) .....	13
Sanctioning .....	47; 66
Athletic .....	47
Band .....	66
Season Regulations .....	47
Scholarship .....	19; 26
Semester and Season .....	18
Soccer (Boys and Girls) .....	54
Softball .....	55
Sport Rules .....	45
National Federation .....	45
USGA .....	53
USTA .....	56
Sportsmanship .....	59
Administrator .....	60
Student .....	61
Coach .....	60
Official .....	62
Spectator .....	61
Disciplinary Action .....	64
Standardized Calendar .....	75
Sunday Contests .....	44
Swimming (Boys and Girls) .....	55
Team Membership .....	16
Tennis (Boys and Girls) .....	57
Track and Field (Boys and Girls) .....	57
Transfer .....	19
Travel .....	46
Undue Influence .....	23
Volleyball .....	57

Wrestling	58
WVSSAC	14
Officers and Duties	4
WVSSAC Tournaments	47

## Sarah Stewart

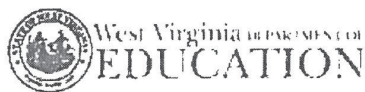
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**From:** Heather Hutchens  
**Sent:** Monday, March 15, 2021 10:53 AM  
**To:** Mary Catherine Tuckwiller; Sarah Stewart; Stephanie Abraham  
**Subject:** RE: Transgender participation in secondary schools bill

It seems like much ado about nothing. I don't think any of it is necessary.

Heather L. Hutchens

General Counsel  
Office of the State Auditor



100 Kanawha Bendway Rd, East  
Charleston, Wv 25305-0330  
304.558.3667 P  
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f i l e Y I

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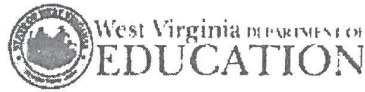
**From:** Mary Catherine Tuckwiller  
**Sent:** Monday, March 15, 2021 10:31 AM  
**To:** Sarah Stewart <sarah.a.stewart@k12.wv.us>; Heather Hutchens <hhutchens@k12.wv.us>; Stephanie Abraham <stephanie.abraham@k12.wv.us>  
**Subject:** RE: Transgender participation in secondary schools bill

At line 65, they convolute gender and sex when the focus throughout the bill seems to be sex – I realize the issue is when someone is transitioning genders but there is no prior reference in the bill to gender or sex – and the question, I suppose, is how will this issue arise?

Also will every student athlete produce a birth certificate now, and then they will call any suspect birth certificates into question, or will they only request from those who assert a transition? It says birth certificate that doesn't appear to be original – a child who is adopted by a step-parent won't have their original birth certificate. I would think for equitable application purposes everyone might need to produce one. Who is making the judgment call on the veracity of the birth certificate and who is evaluating the evidence? SSAC or the high school or the county board? I looked up some similar legislation in other states and it seems to dictate the student must obtain medical exam/confirmation based on these factors:

<http://billstatus.ls.state.ms.us/documents/2021/html/SB/2500-2599/SB2536IN.htm>

**Sarah Stewart**  
Government Affairs Counsel  
Superintendent's Office



1900 Kanawha Boulevard, East  
Charleston, WV 25305-0830  
(800) 558-6674  
(304) 558-0048  
(304) 807-6040  
wvde.us

**FW: YI**

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**From:** Melissa White <[Melissa.White@wvhouse.gov](mailto:Melissa.White@wvhouse.gov)>  
**Sent:** Monday, March 15, 2021 9:44 AM  
**To:** Sarah Stewart <[sarah.a.stewart@k12.wv.us](mailto:sarah.a.stewart@k12.wv.us)>  
**Subject:** FW: Transgender participation in secondary schools bill

[EXTERNAL SENDER]: Do not click links, open attachments or reply to this email unless you recognize the sender and know the content is safe.

Sarah,

Per our discussion.

Thank you,  
Melissa

Melissa J. White  
Chief Counsel  
Committee on Education  
West Virginia House of Delegates  
Room 432M  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**From:** Melissa White  
**Sent:** Thursday, March 11, 2021 9:53 AM  
**To:** Bernie Dolan <[bernie.dolan@wvssac.org](mailto:bernie.dolan@wvssac.org)>; Bernie Dolan <[bdolan@k12.wv.us](mailto:bdolan@k12.wv.us)>  
**Subject:** Transgender participation in secondary schools bill

Bernie,



Case 2:21-cv-00316 Document 289-41 Filed 04/21/22 Page 5 of 6 PageID #: 13969

Attached is a draft of an originating bill regarding transgender participation in sports. I kept it short: There are obviously certain things that would need to be handled in a rule, unless you have language that you would like to see in the bill. Please let me know your thoughts and if there are any unintended consequences. The Chairman does not want to keep girls from participating in boys sports when there are not girls teams.

Thanks,  
Melissa

Melissa J. White  
Chief Counsel  
Committee on Education  
West Virginia House of Delegates  
Room 432M  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**Sarah Stewart**

---

**From:** Melissa White <Melissa.White@wvhouse.gov>  
**Sent:** Monday, March 15, 2021 9:44 AM  
**To:** Sarah Stewart  
**Subject:** FW: Transgender participation in secondary schools bill  
**Attachments:** Transgender originating bill.docx

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Sarah,

Per our discussion.

Thank you,  
Melissa

Melissa J. White  
Chief Counsel  
Committee on Education  
West Virginia House of Delegates  
Room 432M  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**From:** Melissa White  
**Sent:** Thursday, March 11, 2021 9:53 AM  
**To:** Bernie Dolan <bernie.dolan@wvssac.org>; Bernie Dolan <bdolan@k12.wv.us>  
**Subject:** Transgender participation in secondary schools bill

Bernie,

Attached is a draft of an originating bill regarding transgender participation in sports. I kept it short. There are obviously certain things that would need to be handled in a rule, unless you have language that you would like to see in the bill. Please let me know your thoughts and if there are any unintended consequences. The Chairman does not want to keep girls from participating in boys sports when there are not girls teams.

Thanks,  
Melissa

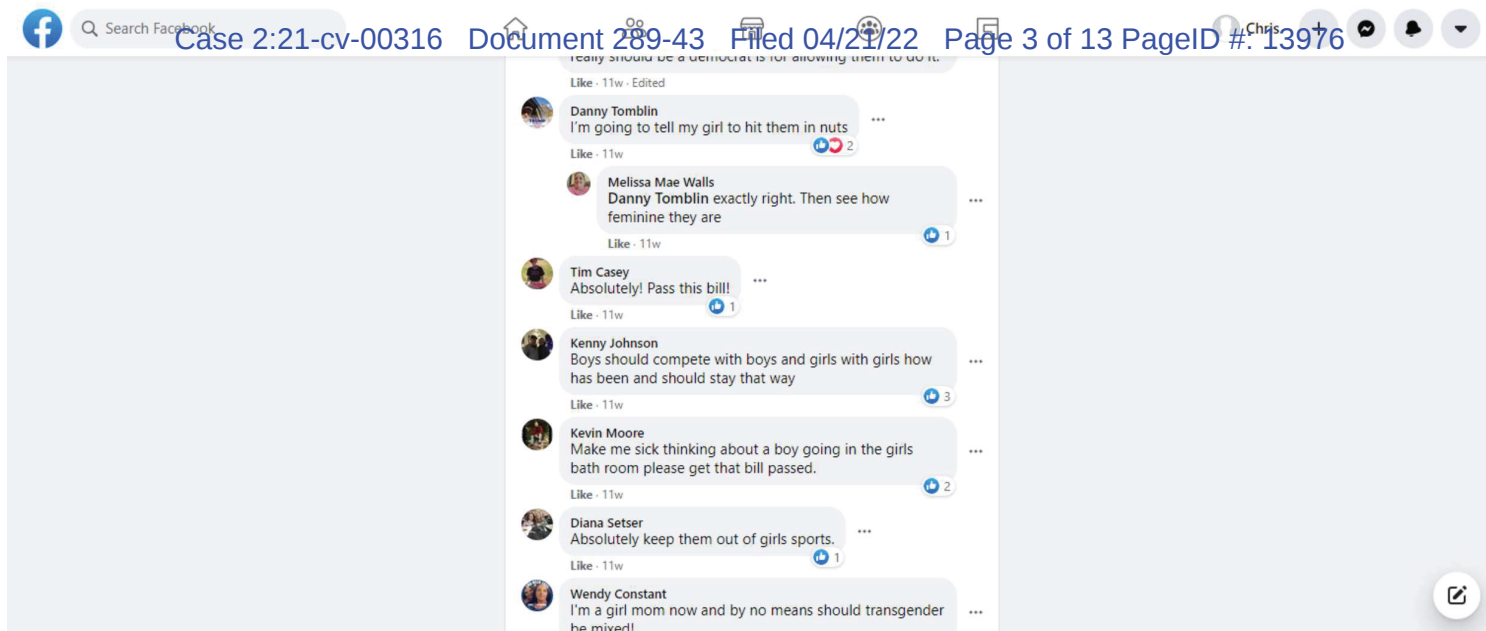
Melissa J. White  
Chief Counsel  
Committee on Education  
West Virginia House of Delegates  
Room 432M

9. Unless otherwise noted, the agency has reviewed the technical sufficiency of the bill and finds as follows:
- a. All code sections in the body of the bill are in the title and enacting section. Yes
  - b. Bill title complies with Section 30, Article VI of the WV Constitution. Yes
  - c. All cross references and citations to federal and state law are correct. Yes
  - d. The numbering of sections, subsections, subdivisions, paragraphs, subparagraphs, clauses and any consecutive similar designation is correct. Yes
  - e. Dates, numbers, and punctuation are sufficiently plain and clear to ascertain what the law is and to give effect to it. Yes
  - f. Effective date of the bill and internal effective dates are not in conflict. Yes
  - g. No other technical errors were identified for which the agency would recommend a technical veto.
10. Agency Rule Making:
- a. Does the bill require a legislative rule? WVBE Policy
  - b. Does the agency currently have sufficient rule-making authority regarding the subject matter of the bill? n/a
  - c. Are emergency rules mandated? Permitted? Does the bill provide for emergency rule authorization status? If not, does the agency need emergency rule making authorization status? n/a
11. Identify whether the bill creates any new funds or accounts or mandates the agency to transfer or distribute monies from accounts under agency control: None
12. Describe any changes to fees, taxes, rates, or revenues: None
13. Agency comments (This may include whether the agency supports, opposes or is neutral about the bill. If the agency questions the constitutionality of the bill, if the bill conflicts with other provisions of state code or federal law, if the agency substantially disagrees with the public policy of the bill, or the agency will suffer undue hardship to make the bill effective, please explain)
14. Is a Governor's veto recommended? If yes, please explain. The WVDE does not support this bill.
15. Please identify whether any other state agency should also provide a bill review: HEPC
16. Preparer's name and title: Sarah Stewart, Government Affairs Counsel
- Date: April 19, 2021



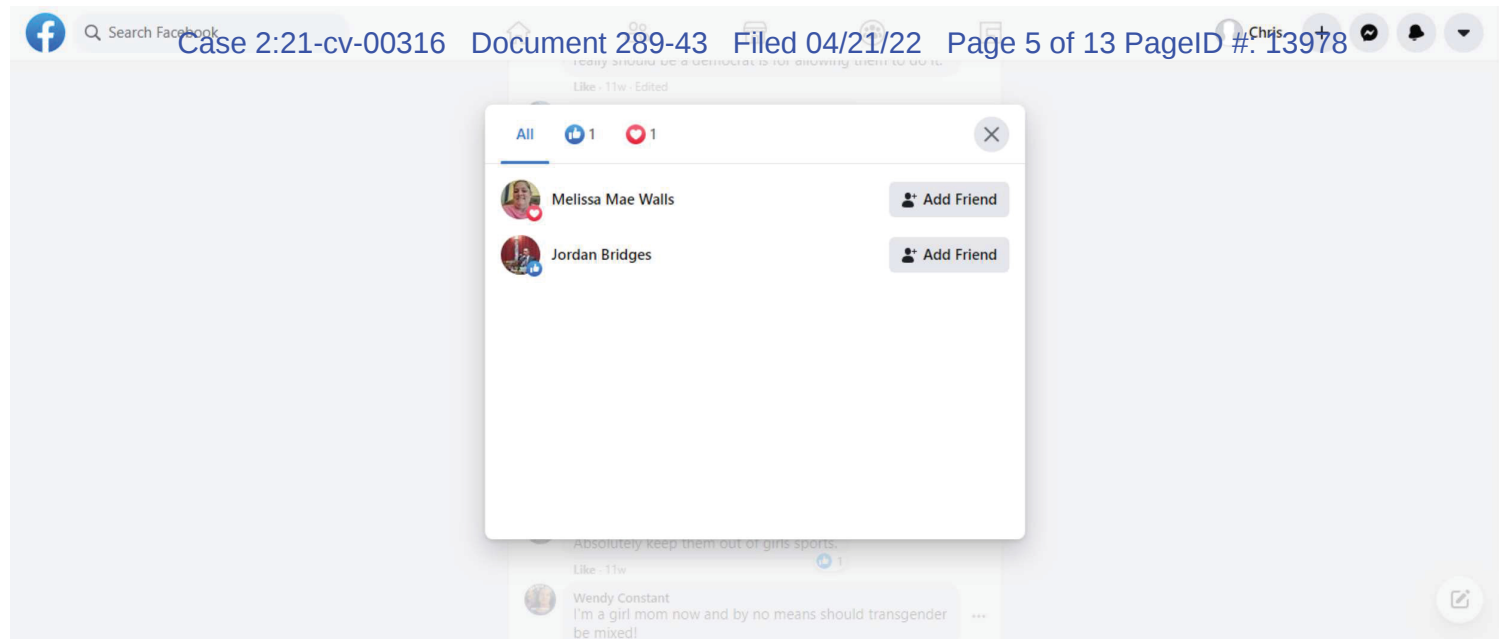


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User:	doj-chayes
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Post author	Jordan Bridges
Post reaction count	265
Post comment count	147



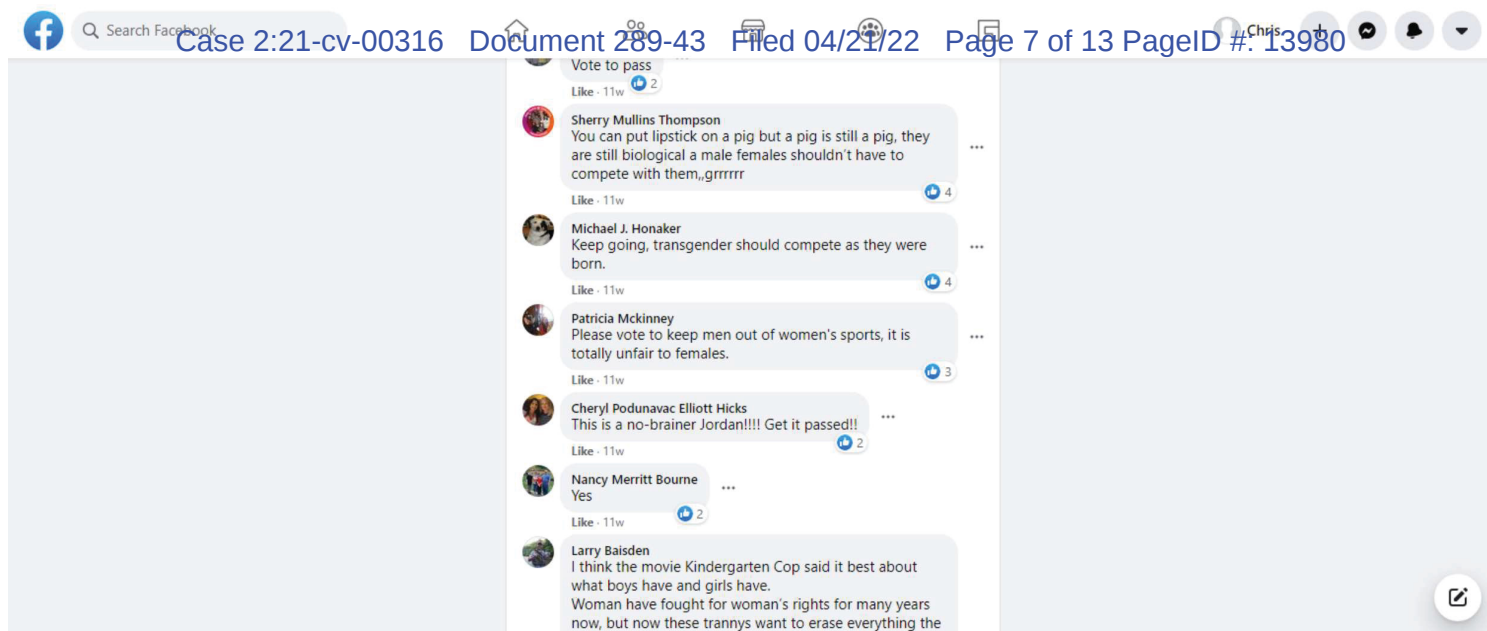


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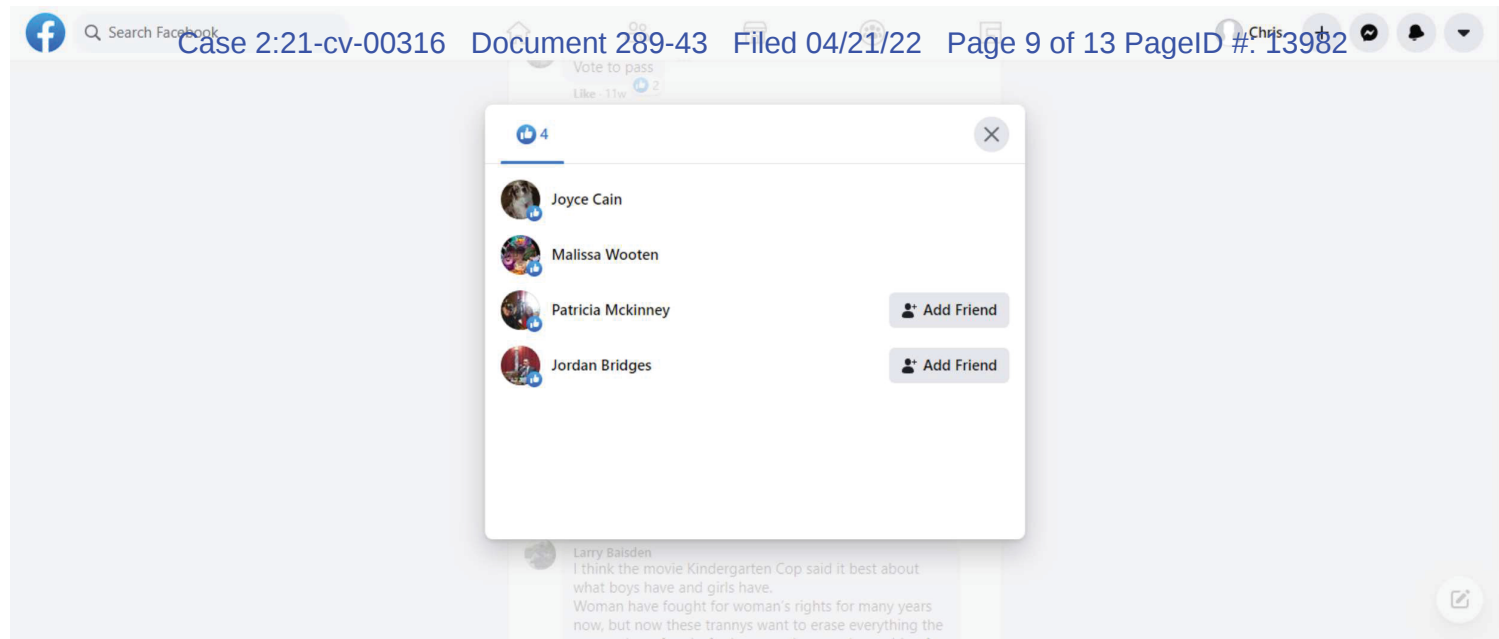


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Post reaction count	265
Post comment count	147





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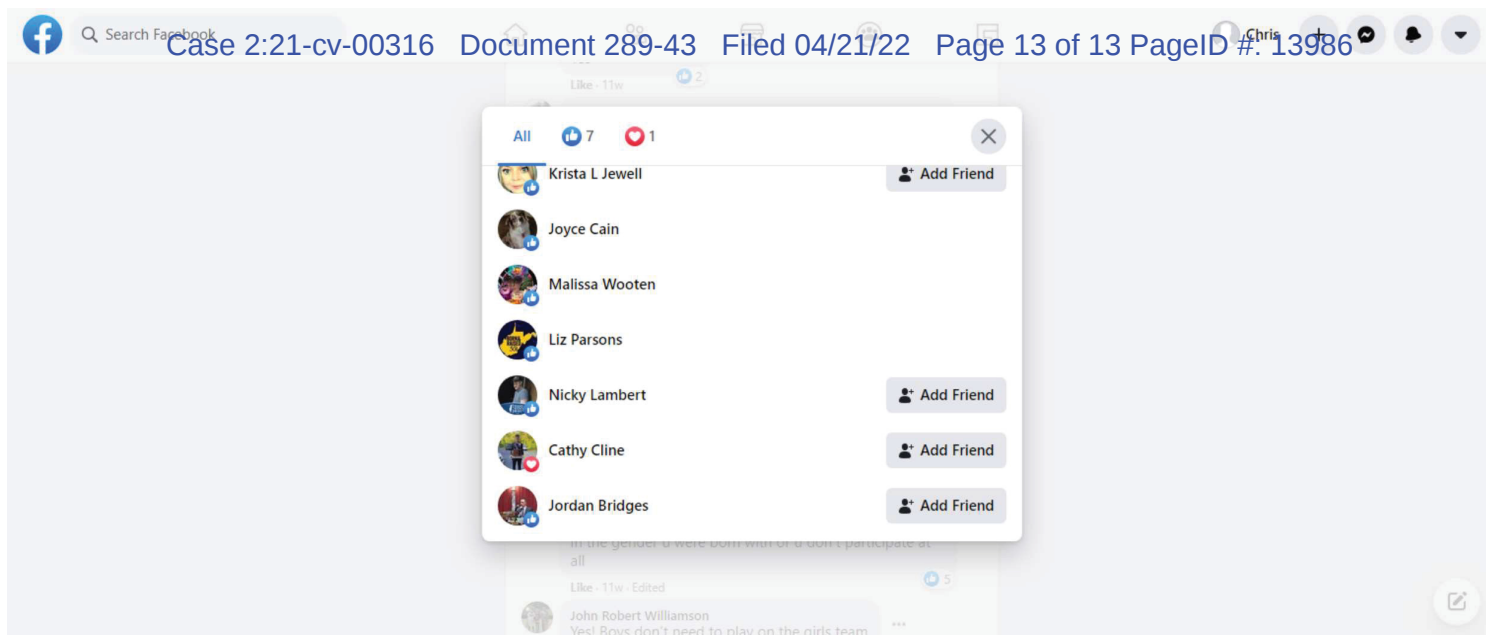


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JA3079

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.@SRuhle asks WV Gov. Justice about signing a bill restricting transgender athletes.

Ruhle: "Can you give me one example of a transgender child trying to get an unfair advantage? Just one in your state, you signed a bill about it."

Justice: "No, I can't really tell you one."

2:41

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MSNBC REPORTS

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Cheryl Gregory @clg0519 · Apr 30, 2021

nailed it

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Thomas Jr. @ThomasJ11742717 · Apr 30, 2021

Replying to @MSNBC and @SRuhle

One thing is normal in the GOP

Suppression of people

💬 1 ↻ 6 ❤️ 37 ↗

erik forrest jackson @MrErikJackson · Apr 30, 2021

Replying to @MSNBC and @SRuhle

I am LIVING for the incensed flick of the glasses at :49

💬 3 ↻ 2 ❤️ 19 ↗

David Lytle @davitydave · Apr 30, 2021

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Molly @mememoreme · Apr 30, 2021

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The place for in-dep

political commenta

perspectives. Home

Stephanie Ruhle

@SRuhle

Mom, Host of 11th I

Stephanie Ruhle on

weeknights 11PM E

Business Analyst, I

numbers & even ple

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JA3080

4/19/22, 10:57 AM Case 2:21-cv-00316 Document 289-44 Filed 04/21/22 Page 3 of 4 PageID #: 13989

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seems like a nenuva guy.

26

43

1,350

Molly @mememoreme · Apr 30, 2021

Also, I wouldn't want him anywhere near my daughter - as a coach or as a governor.

16

18

756

Show replies

Berks @bshires1010 · Apr 30, 2021

Replying to @MSNBC and @SRuhle

That was great journalism at work. TY

12

RobbieRob @RobertW97616297 · Apr 30, 2021

Replying to @MSNBC and @SRuhle

I was told to or else!

3


wolfonthehill @wolfonthehill · Apr 30, 2021

Replying to @MSNBC and @SRuhle


This is how questions should be framed. Well-done.


31

4/19/22, 10:57 AM Case 2:21-cv-00316 Document 289-44 Filed 04/21/22 Page 4 of 4 PageID #: 13990  
MSNBC on Twitter: Do you give ...



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NCAA.org



Board of Governors updates transgender participation policy  
Policy will take effect immediately, and impacted athletes can regain eligibility later if approved by divisions  
Media Center  
Posted: 1/19/2022 8:41:00 PM

The NCAA Board of Governors on Wednesday voted in support of a sport-by-sport approach to transgender participation that preserves opportunity for transgender student-athletes while balancing fairness, inclusion and safety for all who compete. The new policy, effective immediately, aligns transgender student-athlete participation for college sports with [recent policy changes](#) from the United States Olympic and Paralympic Committee and International Olympic Committee.

Like the Olympics, the updated NCAA policy calls for transgender participation for each sport to be determined by the policy for the national governing body of that sport, subject to ongoing review and recommendation by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports to the Board of Governors. If there is no NGB policy for a sport, that sport's international federation policy would be followed. If there is no international federation policy, previously established IOC policy criteria would be followed.

The Board of Governors urged the divisions to provide flexibility to allow for additional eligibility if a transgender student-athlete loses eligibility based on the policy change provided they meet the newly adopted standards.



4/19/22, 10:56 AM Case 2:21-cv-00316 Document 289-45 Filed 04/21/22 Page 3 of 3 PageID #: 13993

The policy is effective starting with the 2022 winter championships. Transgender student-athletes will need to document sport-specific testosterone levels beginning four weeks before their sport's championship selections. Starting with the 2022-23 academic year, transgender student-athletes will need documented levels at the beginning of their season and a second documentation six months after the first. They will also need documented testosterone levels four weeks before championship selections. Full implementation would begin with the 2023-24 academic year.

"We are steadfast in our support of transgender student-athletes and the fostering of fairness across college sports," said John DeGioia, chair of the board and Georgetown president. "It is important that NCAA member schools, conferences and college athletes compete in an inclusive, fair, safe and respectful environment and can move forward with a clear understanding of the new policy."

"Approximately 80% of U.S. Olympians are either current or former college athletes," said Mark Emmert, NCAA president. "This policy alignment provides consistency and further strengthens the relationship between college sports and the U.S. Olympics."

Additionally, the NCAA's Office of Inclusion and the Sport Science Institute released the [Gender Identity and Student-Athlete Participation Summit Final Report](#). The report assists ongoing membership efforts to support inclusion, fairness, and the mental and physical health of transgender and non-binary student-athletes in collegiate sport.

The Board of Governors met Wednesday in Indianapolis as part of the 2022 NCAA Convention. For more on key topics from the 2022 NCAA Convention, visit [ncaa.org/convention](https://www.ncaa.org/convention).

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

B.P.J. by her next friend and mother, HEATHER JACKSON,

*Plaintiff,*

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, DORA STUTLER in her official capacity as Harrison County Superintendent, and THE STATE OF WEST VIRGINIA,

*Defendants,*

and

LAINY ARMISTEAD,

*Defendant-Intervenor.*

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**PLAINTIFF’S STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

**I. B.P.J. Is A Girl Who Is Transgender.**

1. B.P.J. is an eleven-year-old girl who is also transgender. (Ex. 2<sup>1</sup> (Declaration of B.P.J.) ¶ 2; Ex. 12 (Deposition Transcript of B.P.J.) at 25:3-5, 25:11-14, 25:23-26:3; Ex. 13 (Deposition Transcript of Heather Jackson, Jan. 19) at 59:5-6; Ex. 15 (Deposition Transcript of Wesley Scott Pepper) at 46:16-20; Dkt. No. 252 (Stipulation of Uncontested Facts Agreed to by Harrison County Board of Education, County Superintendent Dora Stutler, and Plaintiff) (“County Stip.”) ¶ 1; Dkt. No. 270 (Stipulation of Uncontested Facts Agreed to by West Virginia State Board of Education, State Superintendent W. Clayton

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<sup>1</sup> “Ex.” refers to an exhibit attached to the April 21, 2022, declaration of Loree Stark submitted in support of Plaintiff B.P.J.’s motion for summary judgment.

- Burch, and Plaintiff) (WVBOE Stip.) ¶ 1; Dkt. No. 158 (WVSSAC’s Answer to Plaintiff’s First Amended Complaint (“WVSSAC Ans.”) ¶¶ 1, 6, 30.) B.P.J. was designated male at birth and has a female gender identity. (Ex. 1-A (Declaration of Heather Jackson) at 1; Ex. 1-B at 2.)
2. B.P.J. is fiercely protected by her mother, Heather Jackson; unconditionally loved by her father, Wesley Pepper; and has the support of her older brothers and grandparents. (Ex. 1 ¶¶ 4, 22–23; Ex. 2 ¶ 5; Ex. 15 at 165:21-166:1, 185:5-16.)
  3. When B.P.J. was in third grade, she socially transitioned at school to living and presenting in accordance with her identity as a girl. (Ex. 1 ¶ 11; Ex. 12 at 39:6-39:24.) “Social transition” means allowing a transgender child to live and be socially recognized in accordance with their gender identity. (Ex. 22 (Declaration and Expert Report of Deanna Adkins, M.D.) ¶ 27.)
  4. B.P.J.’s elementary school and middle school have both acknowledged and respect that B.P.J.’s gender identity is female. (Dkt. No. 252 (County Stip.) ¶ 1.)
  5. When B.P.J. was in elementary school, her school created a gender support plan designed to help “account[]” for and “support[]” B.P.J.’s “authentic gender” at school. (Ex. 1-A at 1; Ex. 2 ¶ 6; Dkt. No. 252 (County Stip.) ¶ 1.)
  6. Under this plan, school staff were informed that B.P.J.’s authentic gender is female, and were instructed to refer to her with her female name and using female pronouns. (Ex. 1-A at 2–3.)
  7. Under the gender support plan, school staff were also informed on how to support B.P.J. if she faced problems from others at school because of her gender. (Ex. 1-A at 2–3.)
  8. B.P.J.’s middle school created a similar plan. (Ex. 1-B.)

9. Like the elementary school plan, B.P.J.’s middle school gender support plan confirmed that B.P.J.’s parents are aware of and supportive of her gender identity and that B.P.J. “is comfortable with others knowing her gender identity and transition,” and provided that “all teachers,” students, and multiple administrators and county staff would be made aware of her gender identity. (Ex. 1-B at 2.)
10. Under the elementary and middle school gender support plans, if anyone has questions about B.P.J.’s identity, teachers and staff should “[b]e open and honest” and respond, “[s]he is [B.P.J.]; and that makes her happy.” (Ex. 1-A at 2; Ex. 1-B at 3.)
11. B.P.J. feels supported by her school given its commitment to treating her as the girl she is. (Ex. 2 ¶ 6; Ex. 12 at 130:3-132:13.)
12. In 2019, B.P.J. was diagnosed with gender dysphoria by Dr. Gerald Montano, a pediatrician at the University of Pittsburgh Medical Center Children’s Hospital of Pittsburgh’s Gender and Sexuality Development Program. (Ex. 1 ¶ 13; Ex. 2 ¶ 7; Ex. 20 (Deposition Transcript of Gerald Montano, D.O.) at 93:17-19; Ex. 5 (State of West Virginia’s Response to Plaintiff’s Second Set of Requests for Admission) No. 5; Ex. 6 (Superintendent Dora Stutler’s Responses and Objections to Plaintiff’s Second Set of Requests for Admission) No. 5; Ex. 7 (Harrison County Board of Education’s Responses and Objections to Plaintiff’s Second Set of Requests for Admission) No. 5.)
13. On June 15, 2020, at the first signs of puberty—known as the “Tanner 2” stage of pubertal development—B.P.J. began receiving puberty delaying (or “blocking”) treatment, in accordance with the Endocrine Society’s clinical guidelines for treating gender dysphoria. (Ex. 1 ¶ 14.)

14. B.P.J. has been on puberty delaying treatment for nearly two years. (Ex. 1 ¶ 14; Ex. 2 ¶ 8; Ex. 20 at 115:22-116:4; Ex. 19 (Deposition Transcript of Kacie Kidd, M.D.) at 89:22-90:18.)
15. “Puberty blocking treatment works by pausing endogenous puberty at whatever stage it is at when the treatment begins.” (Ex. 22 ¶ 30.)
16. When administered to transgender girls at the beginning of the “Tanner 2” stage of sexual maturity, puberty-blocking medication prevents transgender girls from experiencing levels of circulating testosterone above what is typical for non-transgender girls and women. (Ex. 24 (Expert Report and Declaration of Joshua D. Safer, M.D., F.A.C.P., F.A.C.E.) ¶ 50; Ex. 25 (Rebuttal Expert Report and Declaration of Joshua D. Safer, M.D., F.A.C.P., F.A.C.E.) ¶ 17; Ex. 22 ¶ 31.)
17. As a result of receiving puberty-delaying medication at the beginning of the “Tanner 2” stage of pubertal development, B.P.J. has not gone through her endogenous puberty and has not experienced the effects of testosterone that would be typical if she underwent her full endogenous puberty. (Ex. 22 ¶¶ 30–31; Ex. 19 at 119:22-120:15.) Specifically, she has never experienced levels of circulating testosterone above what is typical for non-transgender girls and women. (Ex. 24 ¶ 50; Ex. 25 ¶ 17; Ex. 22 ¶ 31.)
18. If B.P.J. goes on to receive gender-affirming hormone therapy, she will receive the same amount of estrogen during puberty that non-transgender girls generate endogenously and will develop the same changes to bone size, skeletal structure, pelvis shape, fat distribution, and secondary sex characteristics that are typically experienced by non-transgender girls who go through a typically female puberty. (Ex. 25 ¶ 17; Ex. 22 ¶ 43.)

**II. B.P.J.'s Wishes To Participate In And Experience The Benefits Of School Sports.**

19. B.P.J. has always liked running and loves playing team sports. (Ex. 2 ¶¶ 3, 13; Ex. 12 at 65:2-4, 145:15-18, 67:21-68:6.)
20. While in elementary school, she enjoyed participating in a recreational cheerleading team with other girls. (Ex. 1 ¶¶ 16-18; Ex. 2 ¶¶ 9-11; Ex. 12 at 72:21-72:22.)
21. As someone who comes from a family of runners, B.P.J. also grew up running and watching her older brothers and mother run competitively and as part of a team. (Ex. 1 ¶ 20; Ex. 2 ¶ 13.)
22. School-sponsored athletics offer a range of educational and social benefits for children and young adults, including camaraderie, cooperation, leadership, teamwork, watching out for fellow players, trust, physical fitness, perseverance, sportsmanship, and discipline. (Dkt. No. 78 (State of West Virginia's Answer to Plaintiff's First Amendment Complaint) ("State Ans.") ¶ 38; Dkt. No. 131 (Lainey Armistead's Answer to Plaintiff's First Amended Complaint) ("Armistead Ans.") ¶ 38; Dkt. No. 156 (West Virginia State Board of Education's Answer to Plaintiff's First Amendment Complaint) ("WVBOE Ans.") ¶ 38; Dkt. No. 157 (Harrison County Board of Education's Answer to Plaintiff's First Amendment Complaint) ("County Ans.") ¶ 38; Dkt. No. 158 (WVSSAC Ans.) ¶ 38; Ex. 27 (Expert Report and Declaration of Mary D. Fry, Ph.D.) ¶¶ 18, 37; Ex. 16 (Deposition Transcript of Harrison County Board of Education 30(b)(6) Designees) at 106:22-106:24, 222:9-17; Ex. 8 (West Virginia State Board of Education's Responses to Plaintiff's Second Set of Requests for Admission) Nos. 45-47; Ex. 17 (Deposition Transcript of WVSSAC 30(b)(6) Designee) at 113:8-11; Ex. 21 (Deposition of Lainey Armistead) at 156:17-25; Dkt. No. 95-1 (Declaration of Lainey Armistead) ¶ 27; Ex. 11 (Lainey Armistead's

- Responses and Objections to Plaintiff's Second Set of Requests for Admission) Nos. 44–45.)
23. The benefits from school athletics can contribute to greater success in college and throughout life. (Ex. 27 ¶¶ 18, 37.)
24. These benefits exist regardless of whether a student wins or loses. (Ex. 5 No. 47; Ex. 6 No. 47; Ex. 8 No. 47; Ex. 9 (State Superintendent W. Clayton Burch's Responses to Plaintiff's Second Set of Requests for Admission) No. 47; Ex. 10 (WVSSAC's Responses to Plaintiff's Second Set of Requests for Admission) No. 47; Ex. 11 No. 47; Ex. 27 ¶ 35).
25. These benefits are advanced when all athletes have the opportunity to play the sport they love. (Ex. 27 ¶ 18.)
26. Encouraging student-athletes to focus on improving their own performance and cooperation with teammates maximizes the benefits of athletics for all participants. (Ex. 27 ¶¶ 28–30, 35.)
27. Where coaches create an environment in which student-athletes feel safe, valued, and respected, performance is improved and the benefits of sport are maximized. (Ex. 27 ¶¶ 26, 34.)
28. Excluding students for no other reason than because they are transgender eliminates the benefits of sports for them and diminishes those benefits for all participants. (Ex. 27 ¶¶ 37–41.)
29. B.P.J. has experienced benefits from participating in cheerleading in the past and from participating in cross-country in the 2021-22 school year. (Ex. 1 ¶¶ 17–18, 28; Ex. 2 ¶¶ 10–11, 16–18.)

30. B.P.J. hopes to continue to experience such benefits from playing on girls' teams in the future. (Ex. 2 ¶ 21.)

**III. Prior To H.B. 3293, West Virginia Had A Longstanding Policy Of Sex Separation In School Sport And Did Not Categorically Bar Transgender Students From Participating.**

31. Before it passed H.B. 3293, West Virginia had a general, longstanding, and unchallenged policy establishing separate school sports teams for boys and girls. *See* W. Va. Code R. § 127.

32. Almost all sports in West Virginia at the public secondary school level are separated into boys' and girls' teams. (Ex. 17 109:24-110:4.) The exceptions are cheerleading, football, baseball, wrestling, and golf. (Ex. 10 Nos. 29–30; Ex. 17 at 109:24-110:4.)

33. Cheer teams are always designated as “coed” or “mixed,” whereas football, baseball, wrestling, and golf teams are boys' teams that permit girls to play if they so desire because no separate girls' teams exist, and so are considered “mixed . . . to respond to demand.” (Ex. 17 at 104:2-105:6.)

34. In practice, cheer “almost always has boy [and girl] members,” but baseball and football are “very seldom” actually mixed. (Ex. 17 at 104:17-20.)

35. There are no co-ed teams for cross-country or track at Bridgeport Middle School or at any other public secondary school in West Virginia. (Ex. 10 Nos. 30–31.)

36. Under rules established by the West Virginia Secondary School Activities Commission (“WVSSAC”)—which were already in existence when H.B. 3293 was enacted—cisgender boys are prohibited from playing on girls' teams at the public secondary school level. (Ex. 17 at 105:4-105:16; Ex. 39 (WVSSAC000148) at § 127-2-3.8; Ex. 7 Nos. 38–39; Ex. 8 Nos. 38–39; Ex. 10 Nos. 38–39; Ex. 11 Nos. 38–39.)



37. By contrast, girls may choose to play on a boys' team if they wish to do so and no girls' team exists, as is the case with football, baseball, wrestling, and golf. (Ex. 17 104:2-105:6.)
38. West Virginia did not have a law or policy prohibiting girls who are transgender from playing on girls' teams before it passed H.B. 3293.
39. Before H.B. 3293, the WVSSAC Board of Directors had an internal policy that allowed students who are transgender to participate on teams consistent with their gender identity if the transgender student's school allowed them to participate, based on its considerations of whether that specific student's participation would impact "fair competition among high school teams." (Ex. 37 (WVSSAC000008).) Under the internal policy, if another school contested the transgender student's eligibility to play, then the Board of Directors would determine whether the student's participation threatened "competitive equity or the safety of teammates and opposing players." (*Id.*)
40. The WVSSAC received no complaints about this internal policy, and the WVSSAC is not aware of any instances of a transgender student attempting to participate under this policy. (Ex. 17 at 118:23-119:16.)
41. Since 2011, the National College Athletics Association ("NCAA") has allowed women who are transgender to participate on women's teams after completing one year of testosterone suppression. (Ex. 24 ¶ 38.)
42. In 2022, the NCAA announced that it had revised its policy to adopt a "sport-by-sport approach" that "calls for transgender participation for each sport to be determined by the policy for the national governing body of that sport, subject to ongoing review and recommendation by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports to the Board of Governors." (Ex. 24 ¶ 39.)

**IV. H.B. 3293 Categorically Bans Transgender Girls And Women From Participating On Girls' And Women's Sports Teams.**

43. On April 9, 2021, West Virginia passed H.B. 3293. W. Va. Code § 18-2-25d. H.B. 3293 went into effect 90 days later. *Id.*
44. H.B. 3293 categorically bans all girls who are transgender from participating in school sports from middle school through college. W. Va. Code § 18-2-25d.
45. H.B. 3293 requires that all public secondary school or college sports in West Virginia be “expressly designated” as either “males,” “females,” or “co-ed” based solely on a student’s “biological sex.” W. Va. Code §§ 18-2-25d(b), (c).
46. H.B. 3293 defines “[b]iological sex” as “an individual’s physical form as a male or female based solely on the individual’s reproductive biology and genetics at birth.” W. Va. Code § 18-2-25d(b)(1).
47. H.B. 3293 further provides that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.” W. Va. Code § 18-2-25d(c)(2). There is no parallel provision for boys’ teams.
48. The legislative findings for H.B. 3293 reject the notion of allowing students to play on sports teams consistent with their “gender identity,” asserting that “gender identity is separate and distinct from biological sex” and that “[c]lassifications based on gender identity serve no legitimate relationship to the State of West Virginia’s interest in promoting equal athletic opportunities for the female sex.” W. Va. Code § 18-2-25d(a)(4).
49. H.B. 3293’s definition of “biological sex” categorically excludes B.P.J. and any other transgender girl from playing sports at the middle school, high school, and collegiate levels. (Ex. 5 Nos. 24 (admitting “that H.B. 3293 prohibits Plaintiff B.P.J. from participating on

girls' athletic teams at all public secondary schools located in West Virginia"), 36–37; Ex. 6 Nos. 36–37; Ex. 7 Nos. 20–22, 36–37; Ex. 8 Nos. 36–37; Ex. 9 Nos. 20–22, 36–37; Ex. 10 Nos. 36–37; Ex. 11 Nos. 36–37; Dkt. No. 252 (County Stip.) ¶ 2; Dkt. No. 270 (WVBOE Stip.) ¶ 2; Ex. 16 at 100:21-101:4; Ex. 17 at 113:16-20; Ex. 28 (Deposition Transcript of Mary D. Fry, Ph.D.) 180:18-20 (Q. [from Attorney David Tryon] Well, right now the rule is HB-3293, which says that [a] transgender girl must participate on the boys['] team..))

50. H.B. 3293 does not prohibit a cisgender girl at any public secondary school in West Virginia from joining a girls' athletic team. (Ex. 5 Nos. 34–35; Ex. 6 Nos. 34–35; Ex. 7 Nos. 34–35; Ex. 8 Nos. 34–35; Ex. 9 Nos. 34–35; Ex. 10 Nos. 34–35; Ex. 11 Nos. 34–35; Ex. 16 at 100:2-101:4; Ex. 18 (Deposition Transcript of State Board of Education 30(b)(6) Designee) at 124:11-25, 125:3-19.)
51. Melissa White, counsel for the House of Delegates Education Committee, referred to H.B. 3293 as a “[t]ransgender participation in secondary schools bill” (Ex. 40 (WVSBOE 000008).)
52. Melissa White also described the bill as a “[t]ransgender originating bill” (Ex. 40 (WVSBOE000039)) and a “bill regarding transgender participation in sports” (Ex. 40 (WVSBOE000009).)
53. During debates over the bill, when asked how H.B. 3293 would change the status quo in West Virginia, the counsel representing the bill replied that the bill “would affect those that changed their sex after birth” and further explained that H.B. 3293 “would not affect” a man who was assigned a male sex at birth. (Ex. 35 (West Virginia House of Delegates Education Committee Testimony, Mar. 18, 2021) at 9.)

54. A member of the West Virginia House of Delegates and Chairman of the Education Committee, Joe Ellington, described the “issue” that H.B. 3923 was designed to address as “two transgender girls” who “were allowed to compete in state track and field meetings in Connecticut.” (Dkt. No. 1-1 (Declaration of Loree Stark) Ex. D (West Virginia House of Delegates, Mar. 25, 2021) at 3; Dkt. No. 25 (Supplemental Declaration of Katelyn Kang) Ex. C at 37–38.)
55. During the debate in the Senate, one senator, Michael J. Maroney, expressly noted that “the bill” is “about transgenders.” (Dkt. No. 1-1 (Declaration of Loree Stark) Ex. E (West Virginia Senate, Apr. 8, 2021) at 2; Dkt. No. 25 (Supplemental Declaration of Katelyn Kang) Ex. F at 32.)
56. Another senator, Rollan Roberts, shared a constituent letter stating that the “trans movement is an attack upon womanhood.” (Dkt. No. 1-1 (Declaration of Loree Stark) Ex. E (West Virginia Senate, Apr. 8, 2021) at 3; Dkt. No. 25 (Supplemental Declaration of Katelyn Kang) Ex. F at 32.)
57. On March 16, 2021, Delegate Jordan Bridges announced on Facebook that he was co-sponsoring H.B. 3293 and then “liked” comments on his post that advocated for physical violence against girls who are transgender, compared girls who are transgender to pigs, and called girls who are transgender by a pejorative term (“tranny”). (Ex. 42 (Jordan Bridges, “Update: The bill passed out of committee,” Facebook, <https://perma.cc/HA5C-VJ4N> (March 16, 2021)).)
58. The sole justification for H.B. 3293 offered in the legislative text is “promot[ing] equal athletic opportunities for the female sex.” W. Va. Code § 18-2-25d(a)(5). The law discusses

equal athletic opportunities only in terms of the “substantial” displacement of female athletes. *Id.* § 18-2-25d(a)(3)-(4).

59. During the discovery period, the State identified additional rationalizations that it claims are advanced by H.B. 3293: (1) “[t]o [p]rotect [w]omen’s [s]ports,” (2) “[t]o follow Title IX,” and (3) “[t]o protect women’s safety in female athletic sports.” (Ex. 4 (State of West Virginia’s Responses to Plaintiff’s First Set of Interrogatories) No. 6.)
60. During a House committee hearing of the bill, Sarah Stewart from the West Virginia Department of Education testified that her office had never received any calls or complaints about transgender students participating in athletics. (Ex. 35 at 11.)
61. The bill’s sponsors also acknowledged that they were not aware of a single instance of a transgender athlete having ever competed on a secondary school or higher education sports team in West Virginia, let alone any “problem” from such participation. (Dkt. No. 1-1 (Declaration of Loree Stark) Ex. B (West Virginia House of Delegates Education Committee, Mar. 18, 2021) at 1–2, Ex. C (West Virginia House of Delegates Judiciary Committee, Mar. 18, 2021) at 1, Ex. D (West Virginia House of Delegates, Mar. 25, 2021) at 1.)
62. When Governor Justice was asked after signing the bill whether he could give “one example of a transgender child trying to get an unfair advantage,” he responded, “No, I can’t really tell you one.” Ex. 43 (MSNBC on Twitter, <https://twitter.com/MSNBC/status/1388132937707802629> [<https://perma.cc/G8VM-QGYU>] (April 30, 2021).) He further indicated that the issue purportedly addressed by H.B. 3293 was not a priority for him, stating, “I didn’t make it a priority. It wasn’t my bill. . . . This is not like it’s a big priority to me. . . . I think we only have 12 kids maybe in our state that are transgender-type kids. I

mean, for crying out loud . . . I sign hundreds of bills, hundreds of bills. This is not a priority to me.” (*Id.*)

63. Defendants were not aware of any transgender student athletes participating on an athletic team offered by a public secondary school in West Virginia when H.B. 3293 was passed. (Defendants’ Responses to Plaintiff’s Second Set of Requests for Admission Nos. 40–41.)
64. Defendants are not currently aware of a transgender student athlete other than B.P.J. participating on an athletic team offered by Bridgeport Middle School or any other public secondary school in West Virginia. (Ex. 5 Nos. 42–43; Ex. 6 Nos. 42–43; Ex. 7 Nos. 42–43; Ex. 8 Nos. 42–43; Ex. 9 Nos. 42–43; Ex. 10 Nos. 42–43; Ex. 11 Nos. 42–43; Ex. 17 at 119:13-16.)
65. WVSSAC has not received any complaints about transgender students participating in school sports in West Virginia. (Ex. 17 at 120:9-15.)
66. The West Virginia Department of Education’s General Counsel described H.B. 3293 as “much ado about nothing.” (Ex. 40 (WVSBOE000006).)
67. The West Virginia Department of Education did not support H.B. 3293 when it was passed. (Ex. 41 (WVSBOE000038).)
68. The State Board’s 30(b)(6) witness testified that the Board had “not had an issue” and “didn’t see an issue” regarding the participation of transgender girls in school sports, and that the Department of Education, State Board, and State Superintendent have never received any complaints regarding students who are transgender participating in school sports. (Ex. 18 at 67:3-10, 101:15-17, 102:12-13, 113:19-114:16, 125:24-126:2, 135:24-136:19).

69. The West Virginia Department of Education and the State Superintendent still do not support H.B. 3293. (Dkt. No. 270 (WVBOE Stip.) ¶ 5.)
- V. **H.B. 3293’s Exclusive Reliance On “Biological Sex” And Categorical Bar To The Participation Of Transgender Women And Girls Is A Stark Departure From The Inclusive Policies Of Major Sporting Associations.**
70. H.B. 3293 classifies school sports teams “according to biological sex” and defines “biological sex” as “an individual’s physical form as male or female based solely on the individual’s reproductive biology and genetics at birth.” W. Va. Code § 18-2-25d(a)(5), (b)(1).
71. Scientists recognize that a person’s sex encompasses different biological components, including sex chromosomes, certain genes, gonads, exposure to sex hormone, internal and external genitalia, and other secondary sex characteristics, which are not always aligned in the same direction. (Ex. 25 ¶¶ 5–6 (and sources cited therein)); Ex. 23 (Exhibit 4 to Deposition Transcript of Deanna Adkins, M.D. (Hembree WC, et al. Endocrine Treatment of Gender Dysphoria/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline. J Clin Endocrinol Metab 2017; 102:3869-3903 (“Endocrine Society Guidelines 2017”) at 3875))).)
72. Although the precise biological causes of gender identity are unknown, gender identity itself has biological underpinnings, possibly as a result of variations in prenatal exposure to sex hormones, gene sequences, epigenetics, or a combination of factors. (Ex. 25 ¶ 6 (and sources cited therein); Ex. 23 (Endocrine Society Guidelines 2017 at 3874–75).)
73. H.B. 3293’s requirement that teams be separated “based solely on the individual’s reproductive biology and genetics at birth” is a stark departure from the prior policy in West Virginia and is not the rule used by elite sporting organizations.

74. The NCAA, World Athletics, and the International Olympic Committee (“IOC”) all permit transgender girls and women to compete in women’s sport events after suppressing their levels of testosterone for particular periods of time or below particular thresholds. (Dkt. No. 78 (State Ans.) ¶ 42; Dkt. No. 131 (Armistead Ans.) ¶ 42; Dkt. No. 156 (WVBOE Ans.) ¶ 42; Dkt. No. 157 (County Ans.) ¶ 42; Dkt. No. 158 (WVSSAC Ans.) ¶ 42; Ex. 24 ¶¶ 27–39.)
75. The NCAA’s policy is described above. *See supra* ¶¶ 41–42. The NCAA policy aims to “preserve[] opportunity for transgender-student athletes.” (Ex. 45 (NCAA, *Board of Governors updates transgender participation policy* (Jan. 19, 2022), <https://www.ncaa.org/news/2022/1/19/media-center-board-of-governors-updates-transgender-participation-policy.aspx>).)
76. Since 2011, World Athletics, the international governing body for track-and-field athletics, has required that women with elevated levels of circulating testosterone lower their levels of testosterone below a threshold amount in order to compete in elite international women’s sports competitions. (Ex. 24 ¶ 27.)
77. In 2019, World Athletics adopted regulations allowing women who are transgender to participate in elite international women’s sports competitions if their total testosterone level in serum is beneath a particular threshold—5 nmol/L—for at least one year before competition. (Ex. 24 ¶ 29.)
78. The IOC published formal eligibility rules for the participation of transgender women in 2003. Those rules required that transgender women athletes could compete in women’s events only if they had genital surgery, a gonadectomy (*i.e.*, removal of the testes), and legal documentation of female sex. (Ex. 24 ¶ 31.)



79. In 2015, the IOC adopted new policies allowing women who are transgender to participate on women's teams if they demonstrated that their total testosterone level in serum was below 10 nmol/L for at least one year prior to competition. (Ex. 24 ¶ 33.)
80. In 2021, the IOC adopted a new "Framework on Fairness, Inclusion, and Non-Discrimination on the Basis of Gender Identity and Sex Variations," which replaces the 2015 guidance. (Ex. 24 ¶ 34.)
81. Unlike the IOC's 2003 and 2015 policies, the IOC's 2021 framework does not attempt to adopt a single set of eligibility standards for the participation of transgender athletes that would apply universally to every IOC sport. Instead, the 2021 framework provides a set of governing principles for sporting bodies to follow when adopting eligibility rules for their particular sport. (Ex. 24 ¶ 35.)
82. Under the 2021 framework, "[n]o athlete should be precluded from competing or excluded from competition on the exclusive ground of an unverified, alleged or perceived unfair competitive advantage due to their sex variations, physical appearance and/or transgender status." (Ex. 24 ¶ 36.) "Until evidence . . . determines otherwise, athletes should not be deemed to have an unfair or disproportionate competitive advantage due to their sex variations, physical appearance and/or transgender status." (Ex. 24 ¶ 36.)
83. The 2021 framework further provides that "[a]ny restrictions arising from eligibility criteria should be based on robust and peer reviewed research that: (a) demonstrates a consistent, unfair, disproportionate competitive advantage in performance and/or an unpreventable risk to the physical safety of other athletes; (b) is largely based on data collected from a demographic group that is consistent in gender and athletic engagement with the group that the eligibility criteria aim to regulate; and (c) demonstrates that such

disproportionate competitive advantage and/or unpreventable risk exists for the specific sport, discipline and event that the eligibility criteria aim to regulate.” (Ex. 24 ¶ 37.)

84. USA Swimming recently adopted a policy allowing girls and women who are transgender to apply to compete in elite events if they demonstrate that their “prior physical development . . . as mitigated by any medical intervention, does not give the athlete a competitive advantage over the athlete’s cisgender [f]emale competitors” and they “demonstrate[] that the concentration of testosterone in the athlete’s serum has been less than 5 nmol/L . . . continuously for a period of at least thirty-six (36) months before the date of the Application.” (Ex. 29 (Declaration of Gregory A. Brown, P.H.D., F.A.C.S.M.) ¶ 177.)
85. A person’s genetic makeup and internal and external reproductive anatomy are not useful indicators of athletic performance and have not been used in elite competition for decades. (Ex. 24 ¶ 49.)
86. Some people with 46,XY chromosomes may have inactive testosterone receptors (a syndrome called “complete androgen insensitivity syndrome, CAIS”) which means they do not respond to testosterone despite very high levels. (Ex. 24 ¶ 26(b).)
87. Usually, people with CAIS have female gender identity and have external genitalia that are typically female. They do not develop the physical characteristics associated with typical male puberty. (Ex. 24 ¶ 26(b).)
88. It has long been recognized that women with CAIS do not have an athletic advantage over other women simply by virtue of having XY chromosomes. (Ex. 24 ¶ 59.)
89. There is a medical consensus that the largest known biological cause of average differences in athletic performance between non-transgender men as a group and non-transgender

women as a group is circulating testosterone beginning with puberty. (Ex. 24 ¶ 25; Ex. 25 ¶ 8; Ex. 29 ¶ 114 (“While boys exhibit some performance advantage even before puberty, it is both true and well known to common experience that the male advantage increases rapidly, and becomes much larger, as boys undergo puberty and become men.”).)

90. Before puberty, boys and girls typically have the same levels of circulating testosterone, and age-grade competitive sports records show only modest differences in athletic performance between non-transgender boys and non-transgender girls. (Ex. 24 ¶¶ 24–25; Ex. 26 (Exhibit 4 to Deposition Transcript of Joshua D. Safer (Handelsman 2018 (“Age-grade competitive sports records show minimal or no female disadvantage prior to puberty[.]”))); Ex. 26 ¶ 114 (describing differences as “modest”).)
91. There have been no studies purporting to establish that any modest differences in athletic performance between pre-pubertal cisgender boys and pre-pubertal cisgender girls are attributable to innate physiology as opposed to social factors. (Ex. 30 (Deposition Transcript of Gregory A. Brown) at 94:19-23; Ex. 25 ¶ 9.)
92. H.B. 3293 does not provide for any consideration of circulating testosterone levels. W. Va. Code § 18-2-25d.

**VI. H.B. 3293 Harms B.P.J.**

93. Under H.B. 3293, B.P.J. is forbidden from playing on a girls’ team at Bridgeport Middle School, or on a girls’ athletic team at any public secondary school in West Virginia. (Ex. 5 Nos. 20-24; Ex. 6 Nos. 20-24; Ex. 7 Nos. 20-24; Ex. 8 Nos. 20-24; Ex. 9 Nos. 20-24; Ex. 10 Nos. 20-24; Ex. 11 Nos. 20-24; Dkt. No. 252 (County Stip.) ¶ 2; Dkt. No. 270 (WVBOE Stip.) ¶ 2.)

94. In May 2021, B.P.J.’s mother, Heather Jackson, met with B.P.J.’s new Principal at Bridgeport Middle School, David Mazza, regarding a gender support plan for B.P.J., which specified the ways the school would support B.P.J. as a girl. (Ex. 1 ¶ 23; Ex. 16 at 95:25-96:6).
95. At that same meeting, Ms. Jackson informed Principal Mazza that B.P.J. wanted to participate on the girls’ cross-country team. (Ex. 1 ¶ 24; Ex. 1-B at 5; Ex. 14 (Deposition Transcript of Heather Jackson (Jan. 20, 2022)) at 250:14-252:7; Ex. 16 at 220:2-16.) In response to Ms. Jackson’s statement, Principal Mazza communicated to Ms. Jackson that B.P.J. would not be able to run on the girls’ cross-country team because of H.B. 3293. (Ex. 1 ¶ 24; Ex. 12 at 129:21-130:2, 106:16-21, 107:3-11; Ex. 13 at 21:22-22:16; Ex. 14 at 250:8-251:12; Ex. 16 at 220:19-22; Dkt. No. 157 (County Ans.) ¶¶ 63–65.)
96. B.P.J. “just want[s] the opportunity to participate in school sports like any other girl.” (Ex. 2 ¶ 21.)
97. Forcing B.P.J. to run on the boys’ team would be stigmatizing, isolating, hurtful, and devastating for her. (Ex. 1 ¶¶ 30–31; Ex. 2 ¶¶ 14–16, 21.)
98. According to B.P.J., “[Being a girl] means—it means everything.” (Ex. 12 29:24-30:5.) “I am not a boy. I do not want to run with the boys when there is a girls’ team and I should not have to run with the boys when there is a girls’ team.” (Ex. 2 ¶ 15; *see also* Ex. 12 at 120:24-121:4.)
99. According to B.P.J., “[r]unning with the girls means a lot to me because I am a girl, and I should be treated like a girl, just like all my friends who are girls. If I did not get to participate in cross-country or track, I would have missed out on the opportunity to spend time with my friends and grow with a new team.” (Ex. 2 ¶ 16.) “It is so upsetting and

hurtful that some people want to take that chance away from me and treat me differently from everyone else just because I am transgender.” (Ex. 2 ¶ 21.)

100. According to B.P.J.’s mother, “[i]t is wrong and senseless to try to make [B.P.J.] participate on boys’ teams when there are girls’ teams available. Forcing B.P.J. to compete on the boys’ cross-country or track teams when girls’ teams are available would completely erase who she is, and it would devastate her because she is a girl.” (Ex. 1 ¶ 30.) “Forcing her to run with the boys is a clear sign to her and others that the state refuses to see her and accept her for the girl that she is.” (Ex. 1 ¶ 31.)

101. B.P.J. does not have the option of running on a co-ed team, as there is no co-ed cross-country or track team at Bridgeport Middle School or at any other public secondary school in West Virginia. (Ex. 10 Nos. 30–31.)

102. Preventing B.P.J. from playing sports with other girls will deprive B.P.J. of experiences of competition, friendship, and responsibility that come from participation in school sports. (Ex. 1 ¶¶ 28, 31; Ex. 2 ¶¶ 10–11, 14, 16–18.)

103. It is hurtful and frustrating for B.P.J. to be denied the opportunity to play on girls’ sports teams, and to be treated differently because she is transgender. (Ex. 2 ¶¶ 14, 21.)

104. Allowing Defendants to enforce H.B. 3293 against B.P.J. would send a signal to B.P.J. that her state refuses to see her for the girl that she is. (Ex. 1 ¶ 31.)

## **VII. B.P.J.’s Lawsuit Challenges Her Exclusion From Girls’ Sports Under H.B. 3293.**

105. B.P.J. filed this lawsuit on May 26, 2021, arguing that H.B. 3293 as applied to her violates Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and the Equal Protection Clause of the United States Constitution. (Dkt. No. 1 (Complaint).)

106. B.P.J.’s Title IX claim is pleaded against the State of West Virginia, the State Board of Education, the County Board of Education, and the WVSSAC. (Dkt. No. 64 (First Amended Complaint) at 20.)
107. B.P.J.’s Equal Protection Clause claim is pleaded against State Superintendent W. Clayton Burch, County Superintendent Dora Stutler, and the WVSSAC. (Dkt. No. 64 (First Amended Complaint) at 22; Dkt. No. 127 (Order dismissing without prejudice B.P.J.’s equal protection claim against the Attorney General in his official capacity).)
108. The Harrison County Board of Education is the governing body of Harrison County’s public education system. W. Va. Code § 18-5-1. The County Superintendent is responsible for executing educational policies under the direction of the State Board and County Board, including interscholastic athletics. W. Va. Code § 18-4-10.
109. “[A]bsent an injunction, the County Board and County Superintendent would be compelled and required to enforce H.B. 3293 against B.P.J.” (Dkt. No. 252 (County Stip.) at ¶¶ 3–4.) The County Board and County Superintendent’s role in enforcing the law is “mandatory, not merely optional.” (Dkt. No. 73 (Harrison County Board of Education’s Memo in Support of Motion to Dismiss First Amended Complaint) at 2, 6; *see also* Ex. 16 at 44:15-45:12, 145:1-145:5.)
110. “Absent an injunction by a court,” the State Board and Superintendent Burch “would be compelled and required to follow H.B. 3293” and the State Board “would be compelled and required to promulgate rules implementing H.B. 3293.” (Dkt. No. 270 (WVBOE Stip.) ¶¶ 3–4; *see also* Ex. 18 at 118:1-3.)

111. Without an injunction, the WVSSAC “cannot adopt or enforce any policy” allowing girls who are transgender to participate on girls’ sports teams that “conflicts with state law.” (Ex. 10 No. 50.)
112. The State Board is federally funded. (Dkt. No. 156 (WVBOE Ans.) ¶ 90; *see also* Ex. 18 at 39:19-40:3.)
113. The County Board is federally funded. (Dkt. No. 157 (County Ans.) ¶ 90; *see also* (Dkt. No. 252 (County Stip.) ¶ 8); Ex. 7 No. 66.)
114. The State Board has a duty to control, supervise, regulate, and/or enforce rules related to interscholastic athletic events in West Virginia. *See* W. Va. Code § 18-2-25; (Ex. 18 at 35:22-24.)
115. The County Board has a duty to control, supervise, regulate, and/or enforce rules related to interscholastic athletic events in West Virginia. *See* W. Va. Code §§ 18-2-25, 18-5-13; (Ex. 16 at 53:24-54:10.)
116. WVSSAC was given controlling authority over federally funded secondary school athletic programs by the State and County Boards. W. Va. Code § 18-2-25; (Ex. 39 (WVSSAC000133-38) (outlining the WVSSAC’s powers over secondary schools and their athletics)).
117. WVSSAC member schools must follow WVSSAC’s rules and regulations when “conducting interscholastic athletic[s]” (Ex. 39 (WVSSAC0000134)) and when determining whether a student is eligible to play secondary school sports. (Ex. 17 at 73:4-73:8.)

118. WVSSAC's Board of Directors has "the power to decide all cases of eligibility of students and participants in interscholastic athletic[s]." (Ex. 39 (WVSSAC000138); *see also* Ex. 17 at 61:25-62:13.)
119. WVSSAC's athletic handbook provides that it must comply with Title IX. (Ex. 38 (WVSSAC000017).)

**VIII. This Court's Preliminary Injunction Allowed B.P.J. To Participate On Her School's Girls' Cross-Country And Track Teams, All Without Incident.**

120. After this Court issued its preliminary injunction on July 21, 2021, B.P.J. was permitted to participate on Bridgeport Middle School's girls' cross-country team. (Ex. 5 No. 6; Ex. 6 No. 6; Ex. 7 No. 6; Ex. 8 No. 6; Ex. 9 No. 6; Ex. 10 No. 6; Ex. 11 No. 6.)
121. B.P.J. participated in the Mountain Hollar MS Invitational meet and the Doddridge Invitational meet while she was on the cross-country team. (Ex. 1 ¶ 27.)
122. In the Mountain Hollar Invitational, B.P.J. placed 51 out of 66 participants. (Ex. 1 ¶ 27; Ex. 33 (Mountain Hollar Invitational Stats).)
123. In the Doddridge Invitational meet, B.P.J. placed 123 out of 150 participants. (Ex. 1 ¶ 27; Ex. 34 (Doddridge Invitational Stats, HCBOE\_1167-HCBOE\_1168).)
124. According to B.P.J.: "My first cross-country season was awesome, and I felt supported by my coaches and the other girls on the team. I made so many new friends and loved competing with and supporting my teammates. We learned about teamwork, having a positive attitude, and how to have fun while being competitive." (Ex. 2 ¶ 18.)
125. In Spring 2022, B.P.J. tried out for, made, and began running on the girls' track team at Bridgeport Middle School. (Ex. 3 (Plaintiff's Second Set of Supplemental Responses and Objections to State of West Virginia's First Set of Interrogatories and Requests for Production) No. 9.)



126. B.P.J. was “ecstatic” to learn she qualified for the track team and “look[s] forward to many more years of running with [her] peers.” (Ex. 2 ¶¶ 20–21.)
127. There were no complaints associated with B.P.J.’s participation on Bridgeport Middle School’s girls’ cross-country team. (Dkt. No. 252 (County Stip.) ¶ 5; Ex. 5 No. 9; Ex. 6 No. 9; Ex. 7 No. 9; Ex. 8 No. 9; Ex. 9 No. 9; Ex. 10 No. 9; Ex. 11 No. 9.)
128. No student was cut from or otherwise not permitted to participate on the cross-country team as a result of B.P.J.’s participation. (Dkt. No. 252 (County Stip.) ¶ 6.)
129. Defendant-Intervenor could not identify “any specific fairness issue” related to B.P.J.’s participation in girls’ cross-country at her middle school. (Ex. 21 at 143:14-20.)
130. Defendant-Intervenor responded, “I don’t know,” when asked whether she “object[ed] to B.P.J. playing on the Bridgeport Middle School girls’ cross-country team.” (Ex. 21 170:13-170:22.)
131. Girls and women who are transgender have competed in a wide range of contact and collision sports in high school and college, including basketball, soccer, volleyball, softball, lacrosse, and women’s tackle football, without any reported injuries to cisgender girls. (Ex. 31 (Declaration of Dr. Chad T. Carlson, M.D., F.A.C.S.M.) at 1; Ex. 32 (Deposition Transcript of Dr. Chad T. Carlson) at 124:6-125:4, 154:12-156:16.)
132. There are significant variations in height, weight, and muscle mass within the population of cisgender girls, and within the population of cisgender boys, such that student athletes all the time play with or compete against students who are bigger, faster, and/or stronger than them, whether they are participating in single sex or co-ed teams. (Ex. 25 at 12 ¶ 27; Ex. 28 at 49:19-50:5, 51:18-22, 52:16-24, 189:13-19.)

133. Any safety considerations attendant to differences in height, weight, and muscle mass are already addressed in West Virginia secondary schools through even-handed rules and the use of proper equipment. (Ex. 16 at 164:3-14, 228:14-22.)
134. Any actual safety concerns attendant to girls who are transgender playing on girls' sports teams "can be addressed through even-handed rules instead of discriminating based on transgender status." (Ex. 25 at ¶ 4(d).)
135. Defendant-Intervenor could not identify any safety concern resulting from B.P.J.'s participation on her middle school girls' cross-country team. (Ex. 21 at 139:25-140:4, "Q: . . . What is the safety concern for middle school cross-country and B.P.J. participating on the girls' team? . . . THE WITNESS: I don't know.")
136. The State does not know of any middle school girl who was physically harmed by B.P.J.'s participation on the Bridgeport Middle School girls' cross-country team. (Ex. 5 No. 10.)

**IX. Lainey Armistead Will Graduate West Virginia State University In May 2022.**

137. Defendant-Intervenor Lainey Armistead will graduate from West Virginia State University in May 2022. (Ex. 22 at 67:21-25.)

Dated: April 21, 2022

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

B.P.J. by her next friend and mother, HEATHER JACKSON,

*Plaintiff,*

v.

WEST VIRGINIA STATE BOARD OF  
EDUCATION, HARRISON COUNTY BOARD  
OF EDUCATION, WEST VIRGINIA  
SECONDARY SCHOOL ACTIVITIES  
COMMISSION, W. CLAYTON BURCH in his  
official capacity as State Superintendent, DORA  
STUTLER in her official capacity as Harrison  
County Superintendent, and THE STATE OF  
WEST VIRGINIA,

*Defendants,*

and

LAINY ARMISTEAD,

*Defendant-Intervenor.*

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I, Loree Stark, do hereby certify that on this 21st day of April, 2022, I electronically filed a true and exact copy of the ***Statement of Undisputed Material Facts*** with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

Loree Stark  
West Virginia Bar No. 12936